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राजपत्र, हिमाचल प्रदेश (असाधारण)

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित

शिमला, मंगलवार, 28 अगस्त, 1973/6 भाद्रपद, 1895

GOVERNMENT OF HIMACHAL PRADESH

HOME DEPARTMENT

RESOLUTION

No. 14-21/71-Home.

Simla-2, the 17th March, 1973

Read—Report of Kulu Police Firing Enquiry Commission, 1971.

OBSERVATIONS

The Government of Himachal Pradesh place on record their appreciation and gratitude for the ability and industry with which Shri D. B. Lal, Justice of Himachal Pradesh High Court constituted a Single-Member Commission of Enquiry, examined the important issues which had been referred to the Commission, which involved the collection, examination and sifting of the voluminous evidence placed before the Commission.

2. The Government, further, take the opportunity to record their appreciation of the assistance rendered by all who appeared before, and assisted the Commission in ascertaining facts.

3. The conclusions of the Commission have been accepted by the Government, and suitable action is being taken, where found necessary.

ORDER

ORDERED THAT the Resolution together with the Commission's Report be published in the Himachal Pradesh Rajpatra for general information.

Ordered also that copies of the Resolution and the Report be released for sale to the public.

By order,
K. N. CHANNA,
Chief Secretary.

REPORT

OF THE

KULU FIRING ENQUIRY COMMISSION

CHAPTER I

PRELIMINARY

Kulu, the valley of Gods, has been a scene of unfortunate firing incident which took place on 6th October, 1971. It was the occasion of Dussehra festival which is stated to be the premier festival of Kulu valley. The duration of the festival was from 30th September, 1971 to 6th October, 1971. Raja Mohinder Singh of Kulu was taking out a procession inside Kala Kendra which is a stadium earmarked by the Government for cultural programmes, on 'lanka daihan' day which is the last day of the festival. The procession was intercepted by the police, and due to assault committed by the Raja and his men, firing was resorted to outside Kala Kendra. Thereafter the mob attacked the Court building of the Deputy Commissioner and at that time also, firing was done by the police. As a result to the firing, one man was killed and few others were injured. The valley of Gods was thus disturbed by the booming of guns and there was a demand for the appointment of a Commission of Enquiry. Accordingly by a notification dated 29th October, 1971, the State Government appointed me as single-member Commission of Enquiry and the terms of reference are as under:

TERMS OF REFERENCE

The notification of the Government can conveniently be reproduced because that would give an idea regarding the scope of enquiry and shall govern the report itself which is now being given.

**“HIMACHAL PRADESH GOVERNMENT
HOME DEPARTMENT
NOTIFICATION**

Simla-2, the 29th October, 1971

No. 14-21/71-Home.—Whereas on the 6th October, 1971, at about 4.30 P.M. a crowd of about 300 persons led by Shri Mohinder Singh of Kulu and his son and Shri Joginder Sen of Mandi, reportedly attempted to criminal-ly trespass Kalakendra precincts;

Whereas, apprehending damage to the Government property, the Sub-Divisional Magistrate and the Deputy Superintendent of Police, Kulu, who were reportedly on duty at the Kalakendra, along with a contingent of police force, requested Shri Mohinder Singh and his son to take an alternative route from outside the Kala Kendra and on this Shri Mohinder Singh reported-ly became infuriated and assaulted the Deputy Superintendent of Police, snatched his baton and smacked him on his neck;

Whereas, Shri Mohinder Singh was reported to have abused the Deputy Superintendent of Police and the Sub-Divisional Magistrate and threatened them that he would have their families wiped out within 7 days;

Whereas, about 20 persons in the crowd were reportedly armed with naked swords and in spite of repeated requests by the Sub-Divisional Magis-trate and the Deputy Superintendent of Police, Shri Mohinder Singh was reported to have refused to stop at the threshold and trespassed into the Kala Kendra premises;

Whereas, Shri Mohinder Singh reportedly further incited the crowd to attack police and chase them away, upon which the crowd reportedly became violent, started pelting stones and missiles on the police party and reportedly attacked the police party in a violent manner;

Whereas, seeing no other way to defend themselves the police reportedly fired 12 rounds in the air;

Whereas, Shri Mohinder Singh and his son reportedly continued to incite the crowd and the crowd continued to attack and intimidate the police with violence;

Whereas, reportedly, fearing immediate apprehension of breach of peace Shri Mohinder Singh and his son were placed under arrest and thereafter the mob shifted the venue of their attack from the Kala Kendra to the Deputy Commissioner's office and started throwing stones and missiles, breaking window panes of office buildings and also broke wooden fencing;

Whereas, the police party which reportedly was rushed to the site to guard office buildings was attacked with stones and other missiles;

Whereas the crowd reportedly was in an exceedingly violent and belligerent mood and police reportedly had to again fire 9 cartridges in the air to foil their bid to attack the police and Government property;

Whereas, it has been alleged that firing was unjustified and a judicial enquiry has been demanded;

Whereas, the Governor, Himachal Pradesh is of the opinion that it is necessary to appoint a Commission of Inquiry for the purpose of making enquiries into certain-definite matters of public importance;

Now, therefore, the Governor of Himachal Pradesh, in exercise of the powers vested in him under section 3 (1) of the Commission of Inquiry Act, 1952, is pleased to appoint Hon'ble Mr. Justice D. B. Lal, Judge, Himachal Pradesh High Court, Simla-1, as the Commission of Inquiry and to require him to enquire into and report on the following matters in relation to the aforesaid firing that took place at Kulu within 3 months of the date of this notification.

- (a) Facts and circumstances culminating in firing and whether there was any justification for such firing;
- (b) The quantum of force applied by Police, and whether the same was justified during the course of the incident;
- (c) The extent of human casualties, dead or injured on both sides, and damage to property during the course of this incident;
- (d) Any other matter which, in the opinion of the Commission, is relevant to the ascertainment of facts relating to the incident.

Further, the Governor of Himachal Pradesh is of the opinion that, having regard to the nature of enquiry to be made and other circumstances of the case, the provisions of sub-sections (2), (4) and (5) of section 5 of the Commission of Inquiry Act should be made applicable to the Commission and hereby directs that the said provisions shall apply to the Commission accordingly from the date of issue of this notification.

By order,
K. N. CHANNA,
Chief Secretary to the
Government of Himachal Pradesh."

PROCEDURE BEFORE THE COMMISSION

The State Government has not laid down any rules of procedure, under the Commission of Inquiry Act, 1952, and as such the Commission itself prescribed its procedure and for that the first sitting was held on 11th November, 1971. As many as four parties were recognised by the Commission. Such parties were represented by counsel who assisted the Commission by cross-examining the witnesses. The respective parties also produced documentary evidence. Ample opportunity was given by making a publication in the Press and also otherwise, for submission of written statements before the Commission by persons who may be interested to depose about the incident. As a result to that, as many as 307 written statements were received by the Commission. All such written statements which were accompanied by affidavits were carefully scrutinised and a list of witnesses was drawn. On various dates fixed by the Commission, as many as 143 witnesses were examined. Besides them, 263 documents were made available to the Commission. The hearings were given on 28 dates and witnesses sponsored by respective parties were produced. The initial examination was conducted by the Commission and all the parties were permitted to cross-examine such witnesses.

After the evidence was over, the respective parties were called upon to argue out their respective cases. As many as 10 days were devoted for hearing arguments. In all, the Commission sat for 42 dates to complete the enquiry.

CHAPTER II DUSSEHRA FESTIVAL

Dussehra festival at Kulu is celebrated for about 7 days. The peculiar feature attached to the festival is that it starts after Dussehra festival elsewhere is over. The dates of celebration are fixed by priests. The pageantry of Dussehra is significant. As the legend goes, Raghunathji is the presiding diety of the Valley. The idol was brought in the 17th Century from Ayudhya. The anecdote is thus described in the 'Souvenir of Kulu's Colourful Dussehra' meant for the year 1970:—

"There is an interesting legend connected with the idol of Raghunathji. It says that Raja Jagat Singh of Kulu who had been informed that a 'Patha' of pearls (a patha is equal to three lbs.) was in the possession of one Brahmin, named Durga Dutt of village Tipri, directed his men to fetch the pearls from the Brahmin. He was greatly harassed by the Raja's men. Finding the torture rather unbearable, he told them that the pearls would be delivered to the Raja on his return to the village from Manikaran where he was going. When the Raja arrived at the village, the Brahmin locked his family and set fire to the house. Sitting by its side, he cut his flesh with a sharp blade at every leap of the fire, shouting, in the tone of a course, 'Have the pearls, O' Raja'. The entire family was reduced to ash.

The Raja was thereafter haunted by the spirit of the innocent Brahmin family. Stung by the qualms of the conscience, he felt every moment the painful and tearing pinch of the strings and arrows of the deadly sin committed by him. He noticed crawling worms in place of rice and human blood in place of water in the tumbler. He went to a renowned Bairagi saint, Shri Krishan Dass Ji Paihari, who lived at Naggar. He unburdened his heavily-laden heart at the feet of the Bairagi and sought his advice to expiate for the wrong done. The saint advised him to embrace Vaishnava Dharma and to enthrone the image of Raghunathji which, at that time, was lying in a temple at Ayudhya. Raja agreed to it. Shri Damodar Dass, a disciple of the Bairagi, was deputed for this purpose. He managed to decamp with the idol, along with the Pujari from Ayudhya. The idol was installed at Raghunathji's temple at Sultanpur and the Raja voluntarily donated his entire kingdom to Raghunathji and started functioning as the vice-regent of the god. Kulu Rajas had since then been ruling in the name of Raghunathji."

The legend finds support in an Urdu book published in 1886 at the instance of Col. Davis, Commissioner, Jullundur. The author was Munshi Hardial Singh, Assistant Commissioner, Punjab.

In the Pjunab Gazetteer Mandi State (1920), page 61, it has been mentioned that the Raja of Kulu had renounced his sovereignty in favour of the god Raghunathji. The theocracy is clearly apparent and is usually recognised in some outward form. At Kulu the Raja exhibits his vice-regency by receiving summonses from the camp of Raghunathji through 'chhari bardar' and goes in procession to the camp of Raghunathji to instal the idol in a 'rath' which starts for 'lanka daihan' ceremony.

The pageantry starts with the visit of all the deities of the Valley. The Goddess Haddamba is the first invitee of Raghunathji and a 'chhari' is sent to her. Only then the deity Raghunathji starts and comes to the maidan where it is installed in a 'rath' and the Raja of Kulu along with others pulls the rath all around the maidan. The Haddamba legend has been so stated by Thakur Beli Ram Advocate (CW. 117).

Afterwards the idol of Raghunathji is installed in a camp inside Dhalpur maidan which is an open space within Kulu town, concerning vast area and all the subsidiary deities are installed all around the Dhalpur maidan at their respective places. The Raja of Kulu also sets up his camp near the camp or temple of Raghunathji. He actually resides in his camp during the festival. A day before 'lanka daihan', which is known as 'Mohalla', all the subsidiary deities go to the camp of Raghunathji to give their attendance. Formerly 365 deities used to attend, but now the number is much reduced. The reason stated is that the tenants occupying lands in the ownership of deities have

become proprietors under the land reform enactment. In this manner, the income accruing to the deities has diminished and, therefore, they have ceased attending the festival. The number is reduced even to 50 or 60 in any particular year. The State Government has adopted giving grants to individual deities which is an allurement to them to come and attend the Dussehra. These deities are by themselves decorated in multicolours. The persons 'kardars', 'pujaris', 'gur' etc., of the deities also wear colourful dresses and they go singing and dancing to the presiding deity, namely Raghunathji, for attendance. At the camp of Raghunathji, according to Durga Singh kardar of Raghunathji (CW. 72), 'kesar' packets are distributed to each deity.

On lanka daihan day, with which we are concerned in this enquiry, the Raja along with his men goes in procession to another shamyana smaller in size which is set up over the upper portion of Kala Kendra stadium. He goes there in a procession while sitting in 'sukhpal'. He is accompanied by an ornamental mare known as "Narsinghji-ki-ghori". He reaches the shamyana at about 2 or 3 P.M. and sits there for an hour or two. Some devtas are also taken to the shamyana. 'Natti' dances are performed and devtas are also taken and paraded in such dances. Thereafter 'chhari bardhar' of Raghunathji arrives at the shamyana to summon the Raja who gets up and forms a procession and goes to the temple of Raghunathji which is set up in the maidan. While going to the temple, the mare also accompanies him. The presiding deity is decorated and is installed in the 'rath' which is brought near the temple. The Raja performs the 'Puja' and gives sacrifices. He touches the 'rath' as if pulling it, which is considered a solemn ceremony. Thereafter the Raja along with the 'rath' as well as the mare goes to the bank of the river for lanka daihan ceremony. The sacrifices are made and the ceremony is considered over.

All these rituals do possess a religious sanctity. There can be no denial to that. There is overwhelming evidence in support of these ceremonies pertaining to Dussehra and specially lanka daihan. Almost all the witnesses have stated about them. The only difference is regarding the visit of the mare to the temple of Raghunathji. But the witnesses who have stated that the mare does not come back to the temple, have given discrepant statements. Some have stated that the mare never meets the Raja at the temple, while others have stated that the mare does meet the Raja somewhere in the way, meaning thereby that the mare is also a must for lanka daihan ceremony. Nine witnesses who support the public version including Raja Mohinder Singh (CW. 119), Thakur Beli Ram Advocate (CW. 117), Lala Mehar Chand Advocate (CW. 45), Durga Singh kardar (CW. 72), Amar Nath chhari bardar (CW. 41), Mangat Ram pujari (CW. 73), and Maj. Bhup Singh (C.W. 31) have all stated about these ceremonies. They have also stated that the mare necessarily comes to the temple for performance of ceremonies enabling the rath to start from there. Eight witnesses who came to support the police version also affirm about all these ceremonies including the mare which necessarily comes to the temple on lanka daihan day for the rath to start. These witnesses are Chanan Ram (CW. 27), Pritam Gupta (CW. 29), Hans Raj (CW. 30), Chet Ram gur of Neelkanth (CW. 32), Bhag Chand kardar of Kartik Swami (CW. 34), Dina Nath Sharma (CW. 49), Hari Singh Negi Lambardar of Kothi Maharaja (CW. 50), and Hari Chand kardar of Devi Rani (CW. 52).

It is, therefore, safe to conclude that Dussehra festival and lanka daihan are performed in the manner stated above. The rituals have a religious sanctity. It is also incorrect to suggest, as the learned Advocate General has done,

that the ceremonies are personal of the Raja. Rather, the entire public participates in these ceremonies. The role of Raja is, of course, significant which is in accordance with the legend, as he is vice-regent of the presiding deity Raghunathji.

ROLE OF THE RAJA

As evident, the presiding deity Raghunathji was brought from Ayudhya by the ancestors of the Raja. He is supposed to be the vice-regent for the deity. He goes and camps inside the maidan itself. He takes premier part in every ceremony connected with the festival. According to the Raja himself, he is 'chhari bardar' of Raghunathji. He is supported by Thakur Beli Ram Advocate (CW. 117) and Durga Singh kardar (CW. 72). According to Hari Singh Negi lambardar of Kothi Maharaja (CW. 50), the Raja is a 'kardar' and not a 'chhari bardar'. It is also clear from the statements of the 17 witnesses noted above who have come to support the public version, that the Raja goes in procession to the shamyana and comes back from there in procession to the temple for lanka daihan ceremony. He actually touches the rath and only then the idol starts for lanka daihan ceremony. According to the Raja himself, he performs the 'bali puja' at 10 or 11 A.M. on that day.

According to Hari Singh Negi (CW. 50), the entry in revenue papers right from 1930 to 1952 has been in favour of the Raja as kardar of Raghunathji.

A Dussehra Committee is set up every year for the festival. The two premier members are the Deputy Commissioner Kulu and the Raja himself. The indication is that ceremonies and rituals are performed after due consultation with the Raja. Care is even taken that no performance takes place in Kala Kendra so as to disturb the procession of the Raja.

All this evidence decidedly proves that the role of Raja is primary and it is he who initiates the festival, although the entire public participates in it.

CHAPTER III

I shall now advert to the matters in relation to the aforesaid firing incident, described in the notification, on which a report is solicited from the Commission. These matters have been divided into four clauses, and I would prefer to take up clauses (a) and (b) together because the facts and circumstances are so much intermingled culminating in the firing that the quantum of force applied by the police and justification for the same would necessarily be depicted during the course of discussion upon such facts and circumstances. Therefore, clauses (a) and (b) are being considered conjointly. These clauses are in the following terms:—

- (a) Facts and circumstances culminating in firing and whether there was any justification for such firing;
- (b) The quantum of force applied by Police, and whether the same was justified during the course of the incident.

POLITICAL ATMOSPHERE

Before I advert to the actual occurrence pertaining to Kala Kendra, I need emphasize the prevailing political atmosphere. Dussehra festival was to end in the first week of October, 1971 and the general election was approaching in 1972. Thakur Beli Ram, Advocate, who is almost a leader of the Bar, is decidedly a rival of Shri Lal Chand Prarthi, Minister. He was M.L.A. and Parliamentary Secretary during Punjab regime. He was also once appointed M.L.C. and acted as Chairman, Zila Parishad Kangra. He has been fighting election against the ruling Congress. In the election of 1972, he was supported by the Raja of Kulu and he opposed the sitting Congress

M.L.A. There is a pamphlet (Ex. B/88) which is an election poster depicting photographs of Thakur Beli Ram, Advocate alongwith Raja Mohinder Singh of Kulu. The latter had supported the candidature of Thakur Beli Ram. The indication is that the Raja of Kulu belongs to the party of Thakur Beli Ram and both are opposing Shri Lal Chand Prarthi, Minister. It is also admitted by Thakur Beli Ram (CW. 117) that he did purchase some lands from the Raja of Kulu. Similarly his sons have also purchased some lands from the Rani of Kulu. It is unfortunate that political bickerings have greatly tainted Dussehra celebration of 1971.

STUDENT AGITATION

More than week before the start of celebrations, student-agitation was going on at Kulu. They were objecting semester-system of examination. There were chain hunger strikes. Lala Mehar Chand Advocate (CW. 45) and Shri Jagdish Prasad, President of the Municipal Committee (CW. 133) as well as Shri T. R. Sharma S.D.M. (CW. 127) and Shri I. K. Suri, I.A.S., the then Deputy Commissioner (CW. 126) have all stated about the agitation of students and chain hunger strikes which were being done by them. According to the Deputy Commissioner and the S.D.M., a camp was set up by the students inside the Dhalpur maidan and they used to agitate from that camp. The Deputy Commissioner Shri I. K. Suri (C.W. 126) and the Superintendent of Police Shri K. K. Bhargava (CW. 124) as well as they Deputy S. P. Shri Arjun Dev Bali (C.W. 128) have stated that the students had even obstructed traffic in Akhara Bazar of Kulu and the authorities had to go there to pacify them. This student agitation further aggravated the situation and was decidedly a contributory factor to the occurrence which took place on 6th October, 1971.

SHRI CHARAN DASS DOGRA

At this stage I need take notice of another political controversy which relates to Shri Charan Dass Dogra, Advocate. He is the President of the Bar Association. He was formerly thick and thin with Shri Lal Chand Prarthi, Minister. He was also President of the District Congress Committee. Admittedly a dispute has arisen regarding his office and according to Shri Dogra, the Minister has set up Shri Ved Vyas Passi (CW. 134) as Congress President, although according to Shri Dogra he has not been duly elected. This controversy regarding the office of Congress President of D.C.C. led to a dispute between Shri Dogra and the Minister. In the election of 1972, Shri Dogra was refused the Congress ticket and he almost fell in the party comprised of the Raja of Kulu and Thakur Beli Ram. Shri Dogra took prominent part in the conduct of this enquiry.

INCIDENT OF 1-10-1971

It appears necessary to refer to the incident of 1-10-1971 when the Chief Minister, Dr. Y. S. Parmar, had gone to Kulu and was maltreated by the students as well as by other members of the public who belonged to what they have called "dissident group". That incident happened in this manner. Dussehra festival was in full-swing and on 1-10-1971 the Chief Minister arrived at about 5 P.M. He was duly received by the Minister and the District authorities. He was taken in a jeep and the programme was to take him to Hermitage, a Forest Rest House, for some function. No sooner the jeep started with the Chief Minister there were slogans against him and a certain group of persons

did not permit the jeep to proceed. A piece of burning wood was found thrown upon the Chief Minister. Some of the witnesses have stated that Shri Charan Dass Dogra was also noticed at that occasion. There were students as well, who were demonstrating in that fashion which was really uncalled for. The result was that the Chief Minister had to be taken on a different route and he went away to Naggar. He did not return to Kulu on that day.

There is ample evidence to prove that on that very evening the students mob as well as other miscreants entered Kala Kendra where all preparations were made for cultural show. The screens were there. The light and sound system was fully set up for the stage. The artists had also arrived. Quite a crowd was sitting to witness the performance. At that time, a mob of about 700 started throwing articles and destroying them. Loss worth several thousands was sustained by the authorities.

Shri I. K. Suri, I.A.S. (CW. 128), Shri K. K. Bhargava, I.P.S. (CW. 124) and Shri Arjun Dev Bali, Dy. S.P. (CW. 128) have stated about the occurrence which took place on 1-10-1971. According to Shri I. K. Suri, Deputy Commissioner, it was a pre-arranged demonstration. The slogans were of "Raja Kulu Zindabad". Shri K. K. Bhargava, I.P.S., Superintendent of Police (CW. 124), however, preferred to say that the occurrence had "political basis". Shri Arjun Dev Bali, Dy. S. P. (CW. 128) stated that the dissident group was bound to make mischief and, therefore, the demonstration was arranged. He used a much stronger language when he said that the entire affair was pre-planned and "a deep-seated conspiracy" was in existence. According to Shri Bali, the slogan was "Raja Kulu Zindabad". All these officers have, no doubt, stated about the destruction of property that was done at Kala Kendra. There is even documentary proof for that destruction. Mrs. Achint Bawa (CW. 130), Assistant Director, Songs and Drama Division, Ministry of I&B, New Delhi, was present at that time and she saw the occurrence of destruction committed in Kala Kendra. She proved the reports Ex. C. 36 and C. 37 which were submitted in that connection. Kapur Chand (CW.129), Projector Operator, spoke for his report Ex. C. 23. He also proved the list Ex. C. 35 of the articles issued to State Drama Troupe for the cultural show of 1-10-1971. Ved Bhushan Mahajan (CW. 125), D.P.R.O. proved the letter Ex. C. 23 which he wrote to the Superintendent of Police in that connection. Sohan Lal, Projector Operator (CW. 140) lodged the report Ex. C. 14 at 10 or 11 P.M. relating to this occurrence.

The other three important witnesses who need be referred in this connection are Lala Mehar Chand Advocate (CW. 45), and he states that he was informed that property worth thousands was destroyed at Kala Kendra on that evening. He actually saw destruction of curtains inside Kala Kendra. The other two witnesses are Jagdish Prasad, President Municipal Committee (CW. 133) and Ved Vyas Passi, stated to be the President of D.C.C. (CW. 134) and they have given in detail the occurrence which took place on 1-10-1971. including the destruction of articles within Kala Kendra. According to Jagdish Prasad, the Raja was paraded which he sat over the shoulders of people and they shouted slogans in his favour. The indication is that the Raja and his party-men were responsible for that incident. Ved Vyas Passi specifically named Shri Charan Dass Dogra and stated that he had a talk with Shri Dogra and the latter stated that he was teaching a lesson to the ruling Congress for passing a vote of no-confidence against him leading to his removal from the office of the President of the DCC. there are other witnesses CW. 26, CW. 27, CW. 49 and CW. 50 who also state about the occurrence which took place on 1-10-1971.

The incident of 1-10-1971 is material in this respect that a bonafide apprehension existed in the minds of the authorities that the Raja or his men might not commit any mischief on 6-10-1971. They were legitimately afraid that the articles of Kala Kendra might not be destroyed by the processionists who accompanied the Raja on that day. This would decidedly indicate the intention with which the Magistrate and the Dy. S.P. went to Kala Kendra to intercept the procession of the Raja.

CHAPTER IV

KALA KENDRA

The Raja was taking out his procession from shamyana on 6-10-1971 at about 4 P.M. and this procession was to pass through Kala Kendra so as to reach the temple of Raghunathji. For a finding as to whether the Magistrate and the policemen were justified to intercept the procession at the very threshold of Kala Kendra, it would be necessary to ascertain the right which the Raja could exercise for taking out the procession inside Kala Kendra. The questions naturally arise as to what Kala Kendra is and what are the rights of public within it. As I have stated before, it is a stadium along with its steps for people to sit, some vacant place beneath the stage and the stage itself where performances are held. Behind the stage are three rooms which are called 'Green Rooms' for the artists to assemble. On two sides, that is, northern and southern sides of the stadium are 'parda' walls with gates in them.

The construction of Kala Kendra started about 14 or 15 years ago during the regime of Miss Puri who was S.D.M. of Kulu. 'Kutchra' stairs along with kutchra stage were set up at that time. Subsequently nearly 10 years ago during the regime of one Shri Dhir, S.D.M., a portion of stairs was made 'pucca' and similarly some improvements were also made in the stage. The major work seems to have been done within 4 or 5 years when the three green rooms were constructed and one of the 'parda' walls was put up in 1971. In this connection the statements of Lala Mehar Chand Advocate (CW. 45), Shri Tej Singh Advocate (CW. 46), Jai Gopal (CW. 36) President Block Congress Committee, Jai Nand Lal (CW. 1) kardar of Deota Jamlu and Lambardar of Katrain, Fateh Chand (CW. 3) Sarpanch of Naggar, Gheru Ram (CW. 5) kardar Deota Jamlu, and Moti Ram (82 years) (CW. 8) President of the Panchayat, may be referred. Besides them the statements of CW. 21, CW. 22, CW. 27, CW. 30 and CW. 49 may also be considered.

There is also consensus that near about 2 lakhs must have been spent in the entire construction of Kala Kendra. Lala Mehar Chand Advocate (CW. 45), Raja Mohinder Singh of Kulu (CW. 119), and Jai Gopal (CW. 26) President Block Congress Committee, have given out the figure of 2 lacs. Maj. Bhup Singh (CW. 81) has stated that 3 lakhs must have been spent. According to Shri Tej Singh Advocate (CW. 46) and Hari Singh Negi (CW. 50) Lambardar of Kothi Maharaja, rupees one lakh must have been spent. The solitary witness Room Singh (CW. 19) has chosen to state that only 50 to 60 thousands must have been spent. He has definitely underestimated the cost of construction. Jiwan Lal contractor (CW. 137) had actually taken the contract of the value of Rs. 8,000 or Rs. 9,000 in connection with this stadium. This he, of course, did long ago. All this evidence indicates that more than 2 lakhs have been spent in the construction of Kala Kendra.

As regards the rights of public within Kala Kendra, there is dependable evidence to prove that any member of public can go and utilize Kala Kendra for any legitimate purpose. The only condition is that during functions

arranged by the Government admission is given by tickets for persons who want to occupy chairs or to sit down on 'durries'. Rest of the people can even then go and see the performance from anywhere they like to see it. At other occasions when no public function is being held, any person individually or in group can enter Kala Kendra and utilise the stadium for any lawful purpose. Dhalpur maidan itself is entered as 'Banjar Quadim' in the revenue papers. Kala Kendra is situated within Dhalpur maidan. According to revenue entry, the maidan is to be utilised for the benefit of the public. Dussehra festival itself is being held inside Dhalpur maidan. In this background a question arises, as to whether the Raja as one of the members of the public could take out his procession inside Kala Kendra which exists within Dhalpur maidan. This is so, when he and his ancestors have been taking out such procession from several years in the past.

The witnesses who came to support the police version in this respect, are Shri I. K. Suri, I.A.S. (CW. 126), Shri K. K. Bhargava, I.P.S. (CW. 124) and Shri T. R. Sharma, S.D.M. (CW. 127). I need refer their statements. Shri I. K. Suri stated that Kala Kendra being Government building is primarily meant for Government functions. Formerly permission by people used to be taken from P.W.D. and now Tourism Department grants such permission and such people can go and perform their functions there. According to the Deputy Commissioner, a few persons can always enter Kala Kendra at any time and sit there. If some persons pass through Kala Kendra 'harmlessly', they can very well do so as of right. Back side of Kala Kendra is all open and anybody can enter from that side. Shri K. K. Bhargava stated that any member of the public can go inside Kala Kendra for any "lawful purpose". At special occasions when Government functions are organised, people are excluded and tickets are issued for occupying chairs. Shri T. R. Sharma, S.D.M. (CW. 127) preferred to state that Kala Kendra is a public place and anybody could go and sit there or even could pass through it, may be in the shape of a procession. The witness does not know if meetings can only take place within Kala Kendra after due permission.

The other group of witnesses who came to support the public version were rather emphatic and they stated that the Raja not only had a right to take out his procession through Kala Kendra, but as a member of public he could adopt that route even for the first time. He could not be discriminated against because he was peacefully passing through Kala Kendra. He was not performing any act of mischief. His intention was not to commit any offence. Raja Joginder Sen of Mandi (CW. 120) stated that Kala Kendra is a public place and anybody could enter that. However, he admits that tickets were being sold for cultural show. Lala Mehar Chand Advocate (CW. 45) stated that Kala Kendra exists for public benefit, inferring thereby that the pageantry of the Raja was also a show for the benefit of the public. Shri Tej Singh Advocate (CW. 46) stated that a defence rally was organised in Kala Kendra in 1962 and that for cultural shows fee is charged only for chairs and 'pucca' stairs. Moti Ram (CW. 8) is 82 years old and is a resident of Kulu. He is President of a Panchayat. He states that Dhalpur maidan 'banjar' land, cattle graze over it and school children play. There is no restriction, according to the witness, for any number of people to pass through it. Similarly they can use Kala Kendra area. The Government derived no income from Dhalpur maidan. The witness was formerly holding the office of the Patwari and so he was in a position to state about the revenue entries and also about the rights enjoyed by people in Dhalpur maidan. Jai Dev (CW. 9) is the family 'Purohit' of the Raja. He stated that Dhalpur maidan is an open ground which can be used by any member of the public. Cattle

graze over it and children play. The Government had not put the maidan for any particular use. This was obviously the position before the construction of Kala Kendra. Room Singh (CW. 19) is 68 years old and resident of Kulu. He was formerly appointed as Kanungo and Dhalpur maidan was within his beat. He stated about the revenue entry which was of 'Banjar quadim' for the benefit of the public. He also stated that any procession could pass through the maidan from anywhere. There was no restriction for a body of persons to pass from one point to the other within the maidan. Ram Dass (CW. 20) is 76 years old and resident of Kulu. He is quite dependable because he is the first graduate of Kulu Valley having passed his B.A. in 1927. He stated that Dhalpur maidan was an open land all throughout, although it belonged to Government.

With this evidence on record, it is safe to conclude that Kala Kendra was constructed over open Land which could be utilised by any member of the public for any legitimate purpose. If the Raja, as a member of public, wanted to take out the procession peacefully, through Dhalpur maidan and also inside Kala Kendra construction, he was exercising a right which was meant for the benefit of the public, namely the right to hold a cultural performance in which the public along with the Raja participated. It is evident the Government has never restricted entry of procession within Kala Kendra. Similarly there was no restriction for any person either individually or in group to enter Kala Kendra for "lawful purpose" for which the S. P. Shri K. K. Bhargava (CW. 124) rightly affirmed.

RIGHT OF EASEMENT, IF ANY

It was also argued that the Raja had acquired a customary easement or customary right for taking out the procession. The learned Advocate-General argued with a great learning and insistence that a case of customary right or easement cannot be established for a rambling and roving right to take out the procession over open land belonging to Government. According to him, the right itself was exercised once a year and that was not enough. To me, it appears vain to consider this question from any strictly legal point of view. This enquiry is not a civil suit and pleadings have not been filed in the manner set out in the Code of Civil Procedure. Parties have not led evidence either affirming customary right or easement or denying the same as such. This is hardly a forum for giving legal finding on such intricate question of law. I have, therefore, chosen to consider the entire matter with the pointed attention to the Raja's right to take out the procession as an ordinary citizen, his intention not being to destroy public property and whether the police and magistracy had any right to intercept that procession merely on a apprehension of any mischief or destruction to property which the Raja was likely to commit. As I have stated before, as ordinary member of the public, the Raja along with his men could definitely take out his procession which was decidedly for the benefit of the public because, *inter alia*, it was also a cultural item to be enacted within Kala Kendra. On that portion of maidan such a procession used to be taken out from several years in the past. It was similarly taken out in 1970 and people had gone to Kala Kendra to witness the performance of shamyana and also to witness the procession which itself carried all the pageantry of decorated mare, chhari bardar, the Raja in ceremonial dress and devtas in palanquin. There was even a band playing music. All this was nothing else but a pageantry connected with the Dussehra and if the Raja was taking out such a procession as he used to do before, the responsibility of the police and magistracy was rather to facilitate such a procession so that it passed through peacefully, than intercepting it at

the very threshold and creating an atmosphere which led the Raja and his men to commit violent acts which resulted in subsequent firing at Kala Kendra and also the other incidents which took place at the temple of Raghunathji and outside the compound of the Court of Deputy Commissioner.



SHAMYANA OF THE RAJA OF KULU

Evidence is almost one-sided to indicate that the Raja of Kulu does pitch his shamyana on the upper level of Kala Kendra on lanka daihan day. He goes there in procession to sit in the shamyana for an hour or two before he is summoned by the chhari bardar. 'Natti' dances are performed in the shamyana. Two or three devtas are also taken there. Jagdish Prasad (CW. 133) President Municipal Committee, Kuber Singh (CW. 135) brother of the Raja and, besides them, 5 witnesses more who were examined to support police version, stated about the shamyana. Chanan Ram (CW. 27) and Chet Ram (CW. 32) gur of devta Neelkanth, had seen this shamyana even during the regime of Megh Singh grandfather of the present Raja. Dina Nath Sharma (CW. 49) and Rewat Ram (CW. 51) purported to state that the shamyana was not pitched at 2 or 3 occasions, but they too affirmed that the said shamyana was not pitched during those years because of excessive rains. All the same, the Raja went there in procession and was also brought from there in procession for the ritual of lanka daihan. Fateh Chand panch (CW. 35) stated that devtas are also taken to the shamyana.

The witnesses who came to support public version were rather unanimous to depose about this shamyana. A few of such witnesses can be pointed out, namely Raja Mohinder Singh of Kulu (CW. 119), Thakur Beli Ram Advocate (CW. 117), Durga Singh kardar (CW. 72) and Jai Dev (CW. 9) purohit of Raja. All of them stated that the shamyana is pitched there from ancient days. Ram Dass (CW. 20) may also be mentioned because he is 75 years old and was the first graduate of Kulu valley. He too has spoken about the shamyana and the duration since when it is pitched, according to him, from ancient days. Besides these, 18 other witnesses were examined to support this version and these witnesses are 'kardars' and 'gurs' of several deities, 'nishan bardars' and Sarpanches of respective villages.

It is, therefore, established beyond doubt that the Raja of Kulu pitched his shamyana at the old place on 6th October, 1971 and went to sit there as usual while he waited for the chhari bardar. The dimensions of the shamyana were given by the two Rajas—the Raja of Mandi (CW. 120) and the Raja of Kulu (CW. 119)—and both of them stated that the dimensions used to be 15' x 17' or so. There are also photographs (Ex. B. 96) and (Ex. A. 2) which have been produced by the Raja and the shamyana is shown in these photographs.

PROCESSION—ITS ROUTE ETC.

There is no dispute regarding the procession which the Raja takes from his own camp to the shamyana on lanka daihan day. This procession consists of the ornamental mare and the Raja himself goes in 'sukhpal'. All of them go and sit underneath the shamyana and witness the Natti performance. While coming back from the shamyana up to the temple a procession is formulated. It has been stressed by the learned Advocate-General that the Raja and his family members used to accompany the procession at that time. A few witnesses who came to support police version also stated in that manner. Reference need be made to Jai Gopal (CW. 26) Chanan Ram (CW. 27), Pitamber Gupta sarpanch (CW. 29), Hans Raj (CW. 30), Bhag Chand kardar

of Kartik Swami (CW. 34) and Jagdish Parsad (CW. 133) President Municipal Committee. All of them stated that only 5 to 10 persons used to accompany the procession. However, the police witness Hari Singh Negi (CW. 50) Lambardar of Kothi Maharaja, fixed the number at 20 or 30. Against these witnesses, others who came to support public version stated that nearabout 100 or 200 persons invariably accompanied the Raja in this procession. The Raja (CW. 119) himself, of course, stated that the number used to be 100 to 150. Gehru Ram (CW. 5) kardar of Jamlu, and Ishari (CW. 16) stated that the number used to be nearabout 200 to 250. Ved Ram (CW. 7) kardar Kapil Muni, stated that the number used to be at least 30 or 40. Udho Ram (CW. 2) however, stated that the number used to be 10 or 20. The rest of the witnesses who are kardars and sarpanches etc., have all stated about this procession which uniformly used to be taken out by the Raja.

It is evident that the procession was religious in nature. It could not be stated that only the Raja and his men accompanied the procession. Others could also accompany the same. It is also proved that the ornamental mare used to accompany the procession. A few devtas also accompanied it.

It would then be necessary to find out if the Raja had a right to take the procession on that route. There is no dispute regarding the route which the Raja adopted while going to the shamyana. He followed the P.W.D. road on the margins of which 'safeda' trees are growing. While coming back from the shamyana, he could as well follow the very same route. But as the evidence shows, there was no fixed route for the Raja to follow while coming back to the temple. It is manifest, no ceremonies were performed in the way while coming back to the temple. As such no sanctity could be attached to the route itself. It was rather the shortest route and the Raja was simply required to go to the temple for the performance of lanka daihan. The evidence decidedly indicates that the route was not a fixed one. It was neither a prepared one nor a marked route, nor any beaten path was formulated for the purpose. The Raja and other processionists could adopt any route and in case they had to divert towards one side or the other, as long as they could adopt the shortest route to reach the temple, they could very well do so. There is no entry in the revenue papers regarding this route. An attempt was made on behalf of police witnesses to say that the Raja and chhari bardar salute the 'Asthan of Adi Brahmma' and only thereafter they reach the shamyana and come back from there in procession. The salutation of 'Adi Brahmma' is significant as stated by these witnesses because then the return route of procession is fixed up from over the P.W.D. road over which 'safeda' trees are growing which road I shall hereinafter refer to as "P.W.D. bifurcation." As I have stated above, the evidence does not exist in favour of a fixed route and, therefore, this salutation of 'Adi Brahmma' loses its significance. It is demonstrated by the very statements of witnesses that the Raja used to adopt a straight and shortest route "as far as possible", and there was no sanctity attached to any particular route. It would be absurd to say that each step in the route had its sanctity and only one and the same line of march was adopted at any particular period of time.

In this connection, reference need be made to 18 witnesses who came to support the police version. Jagdish Prasad (CW. 133) President M.C., Mani Ram 80 years old kardar Sarain Mahadev (CW. 33), Jai Gopal Mani Congress Committee (CW. 26), Bhag Chand (CW. 34) kardar Kartik Swami, Fateh Chand panch (CW. 35), and Chanan Ram (CW. 27) have stated that the route was not a fixed one. The land was already 'Banjar' from before and the Raja used to follow any route he preferred from over the 'banjar'. Moti Ram (CW. 8) President of Panchayat, was formerly patwari. He stated

that no entry regarding this route was made in the revenue papers. Room Singh (CW. 19) also reiterated this fact. Besides the 7 witnesses whom I have named above, 11 more witnesses stated on behalf of the police that the route which the Raja followed fell outside Kala Kendra and over the P.W.D. bifurcation.

Against this version, many witnesses were produced to give out that the route was always followed from within Kala Kendra. Some of them, of course, admitted that the said route used to be straight and shortest and that is why the Raja followed it. Therefore, the importance was not of Kala Kendra construction or any area within it, but the importance was of the direction of the route and the shorter distance to be covered. Lala Mehar Chand Advocate (CW. 45), Thakur Beli Ram Advocate (CW. 117), Roshan Lal (CW. 11), Lot Ram (CW. 15) Ishari (CW. 16) and Bhuro 74 years (CW. 22) who carries 'nishan' of Jamlu in the procession, have all stated that the route was followed because it was "straight and shortest". Thakur Beli Ram Advocate (CW. 117), however, preferred to state that it was "shortest traditional route". If importance is attached to any particular spot falling within this route, then according to Rattan Lal (CW. 34), one would have to jump over the wall of Kala Kendra to stick to the original path. The meaning is thus obvious. The Raja followed this route when it was convenient to do so. The construction of Kala Kendra was not there. He even followed this route up till 1970 when the northern 'purdah' wall was not fully constructed. Kala Kendra is open from practically every side. He used to come and pass through Kala Kendra, but that does not give him a right of any defined passage. That is the shortest and straight route, and, therefore, he followed it. The basis is rather of convenience than of any legal right.

Khub Ram 70 years kardar of Devi Hidamba (CW. 6) a very important deity, stated that he does know about the route. According to him, the route was formerly through Kala Kendra as it was an open land. That appears to be the correct version. Similarly stated Chande Ram (CW. 42) who is no one else but the chhari kardar himself. He said that the route is now changed, meaning thereby that there was no sanctity attached to the route itself. Balmukand 67 Years (CW. 10) stated that there was no fixity attached to the route. Sometimes the route fell within Kala Kendra and sometimes fell outside it. These are the witnesses who came to support the public version. The other 28 witnesses who came to support the public version, however, stated that the Raja used to pass through Kala Kendra at every occasion for that procession. These witnesses are. CW: 1, 2, 3, 4, 5, 7, 8, 9, 17, 19, 20, 21, 23, 24, 25, 36, 38, 39, 40, 41, 42, 43, 44, 46, 72, 73, 81 and 119.

I would, therefore, conclude that the route was never a fixed one. The Raja used to pass through Kala Kendra because there was no obstruction present there. Formerly when the construction did not exist, it was all open land and anybody could pass from anywhere, and so the Raja also passed through this land. He used to follow the straight and shortest route. It is futile to argue that any defined right of passage accrued to the Raja. The right itself was a rambling and a roving one. No easement *prima facie* could be acquired for such a right of way.

SANGRI CAMP

The learned Advocate General emphasised that the Raja Sangri used to set up his camp within a part of the area now covered by Kala Kendra and thereby inferred that the route could not be through Kala Kendra because the camp of Raja of Sangri must have intervened. The evidence rather indica-

tes that some portion was still left open within Kala Kendra and the Raja could have passed through such open land. About the situation of the Sangri camp, there is divergent evidence. Sixteen witnesses have come to state that the Sangri camp used to be set up within Kala Kendra area. These witnesses are: CWs. 26, 27, 30, 33, 34, 35, 49, 50, 51, 52, 84, 88, 133, 137, 4 and 42. The last two witnesses came to support the public version. Chande Ram chhari bardar (CW. 42) admittedly accompanied the procession.

Fifteen witnesses, however, came to support the public version and they stated that the camp of Sangri used to be pitched outside the limits of Kala Kendra. These witnesses are: CWs. 5, 7, 19, 36, 39, 40, 41, 45, 46, 72, 73, 81, 117, 119 and 120. The last witness, namely the Raja of Mandi, stated that only 100 persons could sit inside the camp of the Raja of Sangri. It means the dimensions of the camp were not of great magnitude. Some space could certainly be left open within the area now covered by Kala Kendra for the procession to pass through.

Besides the above two lists, 8 witnesses who are in the mixed list, i.e. who came to support the police version as well as public version, have stated that some portion of that camp of Sangri fell outside Kala Kendra and some was located inside it. These witnesses are Pitamber Gupta sarpanch (CW. 29), Chet Ram gur of devta Neelkanth (CW. 32) and Kuber Singh own brother of the Raja (CW. 135) who came to support the police version and Jai Nand Lal kardar of Jamlu (CW. 1), Fateh Chand sarpanch (CW. 3), Balmukand (CW. 10), Roshan Lal (CW. 11) and Rattan Lal (CW. 14) who came to support the public version.

With this balancing of evidence, I can safely conclude that despite the camp site of the Raja of Sangri, there was ample space left out inside Kala Kendra for that procession which the Raja of Kulu used to take out for going to the temple. It is admitted that the Raja of Sangri died in 1964 and from 5 to 6 years before his death, his camp had ceased to be pitched during Dussehra festival. Perhaps that was the reason why about 14 years ago Miss Puri, S.D.M., got the opportunity of laying the foundation of Kala Kendra. The open site was available and no camp used to be pitched within it, the Raja of Sangri having ceased to attend the festival.

The Raja then arrived in a procession from his shamyana and reached Kala Kendra. The question would arise, as to whether his procession could be stopped by the police and the Magistracy. The ancillary question necessarily would be, as to whether the Raja had a right of way for the procession. As I have already stated, this enquiry is not a forum to decide about customary easement or customary right. Under Article 19 (1) (b) of the Constitution, a fundamental right existed in favour of the Raja to assemble "peacefully and without arms". The right of procession is decidedly a subsidiary right to assemble peacefully. The restrictive clause is, of course, there and the State could impose reasonable restriction on the exercise of this right in order to keep up public order. What was then the intention of the Raja? There is absolutely no evidence that by any overtact or omission, the Raja or his men exhibited their intention to disturb public order. They had not till then destroyed or attempted to destroy any property. They had not committed assault nor any other offence relating to injury to person or property. Had the police permitted the Raja to pass through peacefully, this occurrence would not have resulted. It is only after the procession was intercepted that a scuffle took place with the Raja, and criminal force was utilized and at that stage the assembly converted itself into an unlawful assembly within the meaning of section 141 of the I.P. Code. Before that stage the assembly was lawful as it was peaceful.

The Raja like any other ordinary citizen, had a right to carry his procession through Kala Kendra. He was exercising a right which anybody else could have exercised. The procession itself was included in the pageantry of Dussehra. He had been taking out such procession from several years in the past. In the year 1970 also he had taken out this procession. There is some controversy as to whether Shri Charan Dass Dogra who was stated to be present in Kala Kendra in 1970 attempted to stop the procession. He may or may not have attempted to stop it, nonetheless the procession did pass through. Hari Chand (CW. 52) said that Shri Dogra attempted to stop the procession in 1970 but could not succeed. But Kapur Chand, D.I. (CW. 58) who was present on duty inside Kala Kendra at that time, does not say so. He merely stated that the Raja passed through in the procession. Similarly stated Shri T. R. Sharma, S.D.M. (CW. 127) who was also present at that time. This witness rather stated that the Raja passed in procession and no one actually noticed it. Therefore, the objection if any raised by Shri Dogra loses much of its significance because according to the statement of Shri T. R. Sharma, S.D.M., the procession did pass through.

SECTION 141 OF THE I. P. CODE

The learned Advocate-General was emphatic to make his submission that the unlawful assembly was formulated at the very inception and the case fell within clause "Fourthly" of section 141 of I.P. Code. According to the learned counsel, if the Raja was enforcing any right or supposed right, even then no sooner he was stopped by the police the assembly he was constituting became unlawful assembly. With respects to the learned counsel, in my opinion this would entirely be a faulty reasoning. The 'Explanation' appended to section 141 makes it clear that an assembly may not be unlawful at the inception and may subsequently become unlawful for certain reasons. Had the Raja while enforcing his right committed criminal force or even showed criminal force in the enforcement of any such right, then only his assembly could be branded as unlawful assembly. There is no iota of evidence to indicate that a criminal force or a show of criminal force was employed by the Raja at the inception. He had gone to the steps of Kala Kendra in a peaceful manner as he used to do every year. The procession was also peaceful upto that stage. Neither any offence was committed by the Raja, nor any intention to commit such offence is proved against him. There was no doubt some apprehension in the minds of the S.D.M. and the Dy. S.P. that the Raja and his men might not destroy the articles kept within Kala Kendra. The source of this apprehension was obviously the incident which took place on 1-10-1971. This would only indicate the bonafide of these officers, but would it justify their conduct of intercepting the procession? It has been rightly argued by the learned counsel on the other side that the Dy. S.P. Shri Bali and the S.D.M. Shri Sharma, committed illegal act when they cordoned off the procession and stopped the Raja and his men from proceeding any further.

SECTION 144 OF THE CR. P. CODE

This is another facet of the argument. Ample opportunity was available to these officers to initiate action under section 144 of the Cr. P. Code or section 30 of the Police Act. The information was received by Shri K. K. Bhargava, S.P. (CW. 124) at 1.30 P.M. which was to the effect that political parties were to exploit the situation, that articles were to be destroyed and that the Raja was to take out his procession in the "precincts of Kala Kendra". Shri I. K. Suri, I.A.S. (CW. 126) also stated that the information

was to the effect that two groups would clash with each other, that articles would be destroyed, but according to him the S.P. only informed that no one was to be allowed to pass through Kala Kendra. The Deputy Commissioner has not stated that he had any information about the Raja crossing through Kala Kendra. The other two subordinate officers, namely Shri T. R. Sharma S.D.M. (CW. 127) and Shri A. D. Bali Dy. S.P. (CW. 128) both stated that definite information was given that the Raja would take out the procession through Kala Kendra and that he was to be stopped. These two officers also stated that property was likely to be destroyed. Shri Sharma stated that there was apprehension of breach of peace, but Shri Bali preferred to adhere to the other suggestion that political parties were likely to clash within Kala Kendra. It is significant to note that no other political party was organising any function within Kala Kendra at that time. In fact there was no occasion for two political parties to clash with each other. To that extent the information was decidedly wrong. Although Shri I. K. Suri desisted from naming the Raja as the person who was to pass through Kala Kendra and Shri Bhargava did not state that the Raja was to pass actually through Kala Kendra and stated that he was to pass within "the precincts of Kala Kendra" which admittedly included area all around it, yet the S.D.M. and the Dy. S.P. were conveyed the information that the Raja was required to be stopped. It cannot, therefore, be denied that at 1.30 P.M. this information was received that the Raja would take out the procession inside Kala Kendra. In fact that was not a new information because the Raja was not committing a novel act for the first time in taking out the procession through Kala Kendra. This he has been doing since long and the District authorities already knew that the procession was necessary for lanka daihan ceremony. The shamyana was already there and the Raja was sitting in it. The procession was bound to arrive and its direction was evidently towards the temple of Raghunathji. There was thus ample time and opportunity with the District authorities to initiate action under section 144 Cr. P. Code. In fact the said provision is meant for such a situation. If there was apprehension of breach of peace and the Raja or his men were likely to destroy the articles of Kala Kendra, an order under section 144 could have been issued and even served upon the Raja.

SECTION 30 OF THE POLICE ACT

Under section 30 of the Police Act, even the route of the procession could be laid down. The P.W.D. bifurcation could as well be fixed up as the route for the procession. According to these authorities that was actually the route of the procession and, therefore, a public street was decidedly involved in the case. As such licence could be issued under section 30 of the Act and proper directions could be given under that section to guide the procession. But all this was not done. Had such orders been passed and the Raja defied such orders, something could be stated in favour of the case that the Raja committed criminal trespass while entering Kala Kendra. This being not the position, the Raja and his men cannot be stated to have committed criminal trespass while they entered Kala Kendra. I have already stated above that the conduct of the S.D.M. and the Dy. S.P. was unjustified when they intercepted the procession. The interference cannot be stated to have a legal basis. If any untoward incident happened later on and the assembly turned into an unlawful assembly, the responsibility was of these officers.

The complexion of the assembly no doubt changed subsequently. When the Raja was intercepted by the police a scuffle took place and some persons also misbehaved. The Dy. S.P. Shri A. D. Bali (CW. 128) was manhandled,

although it is difficult to say if his baton was snatched and thrown or a fist blow was given over his neck. It is not even necessary for me to give a finding on this part of the case. The Commission is informed that a complaint is already pending in the Court of Magistrate. Proper evidence would be adduced in that complaint and decision would be given. It is sufficient for me to conclude that a scuffle decidedly took place and whoever was at fault a pandemonium occurred. The people became restless. Some stones and bottles were thrown over the police. The situation became unmanageable and the crowd along with the Raja struggled through Kala Kendra. The mare passed through. Along with the mare nearabout 300 persons forced their way outside the gate. The Raja was decidedly aiming to go to the temple and he hurried to that side. The Dy. S.P. and his men, it appears, were all along chasing them. In fact they were trying to stop them from coming out of the gate of Kala Kendra. This was again a reckless conduct on their part. The purpose was to establish law and order. If 300 persons accompanying the Raja were forcing their way out and were trying to run away, where was the necessity to blockade them. But this seems to be what was actually done. The intention of Shri A. D. Bali, Dy. S.P. was to catch hold the Raja and his men. A scuffle had taken place and his personal feelings were touched. He wanted to teach a lesson to the Raja and his men. Dominated by all such considerations, the situation was permitted to take its turn from bad to worse.

At this stage, it would be pertinent to ascertain the number of persons moving in that procession. The number was decidedly 300 or even more. The police witnesses Shri A. D. Bali, Dy. S.P. (CW. 128), Shri T. R. Sharma, S.D.M. (CW. 127), Kapur Chand, D.I. (CW. 58), Chhajju Ram S.H.O. (CW. 57), Tara Chand A.S.I. (CW. 54) and Kulwant Singh, H.C. (CW. 53) have all stated that the number was 300 or more. Similarly the other witnesses Ram Lal Soni (CW. 61), Roshan Lal sarpanch (CW. 65), Sobha Ram sarpanch (CW. 87), Prem Nath Vice-President Municipal Committee (CW. 85) and Rigzan (CW. 88) stated that the number was 200 or 250. According to Tehal Singh, Reader to Deputy Commissioner (CW. 97), Mani Chand (CW. 40), Ganga Ram (CW. 38) and Amar Nath (CW. 4), the number was 500 or even 600. Major Bhup Singh (CW. 81), however, stated that the number was only 150. This witness was perhaps telling the usual number of persons moving in that procession. The Raja himself stated that about 150 persons were accompanying him. That may even be correct. The number must have swelled when there was a pandemonium and everyone present in Kala Kendra was forcing his way out of the gate.

It is stated that 20 to 25 persons were holding naked swords in their hands. It is in evidence that Natti dances are performed even while holding naked swords. At the same time, it is wrong to state that any appreciable number of naked swords were waved so as to assault the police party. The police witnesses Rewat Ram (CW. 51) and Hari Chand (CW. 52) have stated that Natti dances are performed while holding naked swords. According to Durga Singh A.S.I. (CW. 55), Chhajju Ram, S.H.O. (CW. 57) and Kapur Chand D.I. (CW. 58), 20 or 25 naked swords were being waved by the processionists. Ram Lal Soni (CW. 61) could only state that naked swords were there and he did not tell the number. These are all police witnesses. In this connection, the statement of Shri T. R. Sharma, S.D.M. (CW. 127) is significant because he considerably reduced the number of naked swords. According to him, such swords were only two in number. The public witnesses Ganga Ram (CW. 38) and Mani Chand (CW. 40) no doubt stated that no naked swords were waved by the crowd. There is no

reason to disbelieve the S.D.M. and as such it is safe to conclude that the naked swords were not exhibited in any appreciable number. It is also in evidence that no one was assaulted by a naked sword. There is no sword injury on the person of any body.

According to Rewat Ram (CW. 51), Jamlu devta was present in the procession. Two or three devtas were already taken to the shamyana and possibly such devtas were present in the procession. The mare was, of course there. The Raja was then coming in the procession and was accompanied by the chhari bardar, mare and devtas. The procession was also proceeded by drum-beaters.

It may be pointed out at this stage that the Raja of Mandi was not leading the procession as has been alleged. Except the statement of Shri A. D. Bali, Dy. S.P. (CW. 128) no witness has stated that the Raja of Mandi was leading the procession. Shri T. R. Sharma, S.D.M. (CW. 127) merely stated that he saw the Raja of Mandi at the topmost step and the witness made a request to him to pacify the Raja of Kulu. But this statement is not to be found in the affidavit of the witness. So whatever he has stated in Court is not corroborated by his affidavit. Besides these two witnesses, the third police witness who speaks about the Raja of Mandi is Kapur Chand D.I. (CW. 58) another responsible officer. He stated significantly that the Raja of Mandi did not instigate anybody either inside or outside Kala Kendra. Besides these three police witnesses, seven witnesses from public side totally negatived any role of the Raja of Mandi in this regard. First I would take up the statement of Raja Joginder Sen of Mandi (CW. 120). He is a very respectable witness. He was not only a ruling chief for 22 years, but has been an Ambassador in Brazil for a couple of years. he was an M.P. and it is stated that during his rule, he gave a democratic constitution to the State of Mandi. He was title holder of 'great magnitude' during British regime. The witness stated that he was invitee of the Raja of Kulu. He took his lunch at about 1.30 P.M. in the tent of the Raja. Thereafter he came to the shamyana and witnessed the function for some time. He came down in the Kala Kendra thereafter, and sometimes stood near the stage and sometimes went over it and saw the procession from there. He has denied that he led the procession from there. He is supported by the Raja of Kulu (CW. 119), Maj. Bhup Singh (CW. 8), Amar Nath chhari bardar (CW. 41) and Shri Chand kardar of Jamlu (CW. 36). The two public witnesses Ganga Ram (CW. 38) and Dine (CW. 39) however, stated that the Raja of Mandi was seen in the procession but they only mean to say that the said Raja was present inside Kala Kendra when the procession was going, which is of course correct and the witnesses must have inferred that he was also a member of that procession. All the same, it is safe to conclude that the Raja of Mandi never led the procession. He was no doubt present in Kala Kendra and took some photographs. He was holding a camera and his hobby is, as he states, to take photographs.

Shri A. D. Bali, Dy. S.P. (CW. 128) stated at first that the Raja of Mandi had also instigated the crowd to beat the police, but later on he resiled from that statement and frankly admitted that he had wrongly stated before, that the Raja of Mandi had instigated the crowd to beat the police. Therefore, the other statement of Shri Bali is not very convincing and it may be concluded that the Raja of Mandi was not leading the procession.

INSIDE KALA KENDRA

It may then be stated in short as to what actually took place inside Kala Kendra. The police version is that the procession of the Raja was stopped at the threshold of Kala Kendra. This seems to be quite natural, in the

intention of the authorities was to stop the procession, the same must have been intercepted nearabout the topmost step of Kala Kendra. This is so stated by Shri T. R. Sharma, Magistrate (CW. 127); Shri A. D. Bali, Dy. S.P. (C.W. 128); Kapoor Chand, D.I. (CW. 58); Tek Chand, S.I. (CW. 64); Durga Singh, A.S.I. (CW. 55); Chajju Ram, S.H.O. (CW. 57) and Parma Nand, S.I. (CW. 59). The other police witnesses who stated in the same strai are C.Ws. 51, 53, 60, 61, 62, 65, 87, 88 and 132. Tehal Singh, Reader (CW. 97) was deputed on duty and he also stated that the procession was intercepted at the topmost step. Besides these police witnesses, Ganga Ram (CW. 38), Chande Ram chhari bardar (CW. 42) and Maj. Bhup Singh (CW. 81) who came to support the public version also admitted that the procession was intercepted at the upper part of Kala Kendra. The other witnesses who came to support public version, no doubt stated that the procession was permitted to go either upto the middle of Kala Kendra or even upto a few paces near the gate and then it was intercepted. The police version being more natural should be accepted. Regarding the snatching of baton and snacking of blow over the person of the Dy S.P., I have already stated above that it is not necessary to give any categorical finding. It is amply proved that a scuffle did take place between the Raja, his son and the Dy. S.P. Shri T. R. Sharma, Magistrate (CW. 127) could merely state that the Raja and his son had dragged away the Dy. S.P. He did not state about the snatching of the baton or the beating which might have been given by the Raja to Shri Bali. The public version is that the mare was beaten by a lathi and the syce fell down. Smt. Tuli (CW. 44) who is wife of the syce came to state that she could hold up the reins of the mare but was slapped by the police. Raja Mohinder Singh of Kulu (CW. 119), however, did not state that the mare was beaten by lathi, but preferred to state that it was touched by a lathi and so it bolted away. When there was a scuffle and a pandemonium took place, the mare might have been touched, even inadvertantly by a lathi. Chande Ram (CW. 42) who was charri bardar and was obviously accompanying the procession, stated, that a shower of stones fell within Kala Kendra. The witness received injury by a stone and his chhari got bent due to impact. He is a witness who came to support the public version. Shri T. R. Sharma, Magistrate (CW. 127), Shri A. D. Bali Dy. S.P. (CW. 128) as well as other police witnesses do state about the pelting of stones inside Kala Kendra. It appears, therefore, that showers of stones fall inside Kala Kendra. Chande Ram chari bardar (CW. 42) also stated that the son of Raja had grapped with the Dy. S.P. The Raja of Mandi (CW. 120) another responsible witness, could not deny that any scuffle took place between the Raja and the Dy. S.P. The witness simply stated that he did not see any such scuffle or beating between them. Dinu (CW. 39), another witness for public version, stated that the Raja had exclaimed that the 'rasta' was "Raj Rasta" and hence no one could stop him from following that 'rasta'. The statement shows the spirit with which the Raja defied the orders of the Magistrate and the Dy. S.P. and forced his way through Kala Kendra. Surtu (CW. 25) gave the correct picture when he stated in the following language:

"After great pushing and 'dhakka-mukki', we could come out of that gate with great difficulty."

Regarding the damage that was done inside Kala Kendra, Shri K.K. Bhargava, I.P.S. (CW. 124) stated that 10 or 12 chairs were found in damaged condition, and according to Shri I. K. Suri, I.A.S. (CW. 126), 20 or 30 chairs were lying up-turned. Therefore, no substantial damage was done by the mob inside Kala Kendra.

It can, therefore, be concluded that inside Kala Kendra, the procession of the Raja entered peacefully. He had a right to pass through Kala Kendra. The Magistrate and the police wrongfully intercepted the procession. At that time the Raja had asserted his right to pass through. A scuffle took place. Perhaps abuses, or harsh words were also exchanged. As Shri T. R. Sharma, Magistrate (CW. 127) stated, the mere stumbled down at two or three places. It might have been touched by a lathi and so it bolted away. There was a pandemonium and the entire crowd rushed through the gate of Kala Kendra. The Dy. S.P. and his men were chasing the Raja and his son. They could not catch hold of them and the Raja and his son managed to escape even outside Kala Kendra and they ran away to the temple of Raghunathji that was set up inside the maidan. Since the police did not exercise any force inside Kala Kendra, there is no question for any excessive force having been applied there.

OUTSIDE KALA KENDRA

It is thus evident, that the procession consisting of nearabout 300 persons jostled out of the gate of Kala Kendra—the police all the time chasing them. The crowd included also the persons who came to witness the fair. According to the witnesses, nearabout one thousand persons in all were present inside Kala Kendra at that time. After they came out of Kala Kendra, the number swelled still more. According to the witnesses Kulwant Singh H.C. (CW. 53), Tek Chand A.S.I. (CW. 54), Durga Singh A.S.I. (CW. 55), Chajju Ram S.H.O. (CW. 57), Kapoor Chand D.I. (CW. 58), Prem Nath Vice-President (CW. 85), Mahant Ram C. (CW. 131) and Nika Ram H.C. (CW. 132) the crowd had swelled to three thousand or even four thousand persons. There was already an altercation with the Raja and some instigation was given to the people to commit mischief. Stones and empty bottles were pelted. Shri T. R. Sharma Magistrate (CW. 127) and Shri A. D. Bali Dy. S.P. (CW. 128) have both stated about the pelting of stones and empty bottles. The former said that they were all sandwiched between the wall and the crowd. These witnesses are corroborated by Shiv Ram (CW. 63), Pritam Singh municipal commissioner (CW. 84), Prem Nath vice-president (CW. 85), Ram Lal Soni (CW. 61), Roshan Lal (CW. 65), Mahant Ram C. (CW. 131), Nika Ram H.C. (CW. 132), Jagdish Prasad president (CW. 133) and Ved Vyas Passi president D.C.C. (CW. 134). According to Shri T. R. Sharma Magistrate (CW. 127) and Shri A. D. Bali Dy. S.P. (CW. 128), they had to resort to a show of force to scare away the crowd. Lathis were waved by the constables in the air. The Raja of Mandi (CW. 120) significantly stated that he did not see any lathi-charge being made outside Kala Kendra. He saw a constable firing his rifle in the air. This statement of the Raja almost proves the version of the police that no force was administered in the actual sense of that term. Pritam Singh municipal commissioner of the committee (CW. 84) and Prem Nath vice-president (CW. 85) have both stated that the lathis were waves in the air. Kapoor Chand D.I. (CW. 58) stated that no lathi-charge was made. Shri T. R. Sharma Magistrate and Shri A. D. Bali Dy. S.P. have, of course, stated that lathis were waves in the air to scare away the crowd. Amongst the public witnesses, Bhagat Ram (CW. 37) also admitted that no lathi-charge was made outside Kala Kendra. In fact, nobody received lathi injury at that spot, and it is safe to conclude that effective lathi-charge was not made outside Kala Kendra.

According to Shri Sharma Magistrate and Shri Bali Dy. S.P., they had to resort to firing in the air. In all, 12 rounds were fired. Besides Shri Sharma Magistrate (CW. 127) and Shri A. D. Bali Dy. S.P. (CW. 128), so many

other witnesses came to state about this firing in the air. These witnesses are Kulwant Singh H.C. (CW. 53), Tek Chand A.S.I. (CW. 54), Durga Singh A.S.I. (CW. 55), Chajju Ram S.H.O. (CW. 57), Kapoor Chand D.I. (CW. 58), Pritam Singh municipal commissioner (CW. 84), Prem Nath vice-president (CW. 85), Mahant Ram C. (CW. 131), Nika Ram H.C. (CW. 132) Jagdish Prasad president (CW. 133), Ved Vyas Passi president D.C.C. (CW. 134) and Roshan Lal (CW. 65). From amongst the witnesses who came to support the public version, Sabza Chand (CW. 76) also admitted that the firing was made in the air.

Since no force was administered outside Kala Kendra, no question arises regarding the excessive nature or otherwise of such force.

Another important event which relates to the occurrence outside Kala Kendra, is the arrest of the Raja of Kulu and his son. It is admitted on all hands that one Surrinder Singh was arrested outside Kala Kendra. He was found taking prominent part in creating a riot and so he was arrested. According to public version, the Raja of Kulu and his son came post-haste to the temple of Raghunathji. The Dy. S. P. Shri Bali and other policemen were chasing them. They entered the temple and made the arrests by handcuffing the Raja and his son in the temple. The police version, however, is that the Raja and his son were handcuffed outside Kala Kendra. It would then be convenient to advert to the next stage of the case, namely the arrests, if any, made at the camp or temple of Raghunathji.

TEMPLE OF RAGHUNATHJI—ARRESTS MADE

4 In view of what had taken place both inside and outside Kala Kendra, especially the scuffle which took place between the Dy. S.P. and the Raja of Kulu, the Dy. S.P. Shri A. D. Bali and his men seem to have determined that the Raja should be put under arrest. With that end in view, they rushed behind the Raja who came running to the temple of Raghunathji. In the heat of passion, Shri Bali and his men forgot that they were desecrating the temple by entering its premises while wearing leather boots. There is dependable evidence to prove that Shri Bali and his men did enter the temple, and the Raja and his son were handcuffed inside the temple and were paraded in that condition in Dhalpur maidan while being taken to the Thana. In my opinion, Shri A. D. Bali Dy. S.P. could not be an accuser and a judge both at the same time. If the Raja had committed any offence, the Dy. S. P. should have waited for a proper warrant of arrest issued by a Magistrate. Why should this officer have taken the law in his own hands? It was not even necessary to arrest the Raja and his son. The situation got deteriorated and lathi-charges were administered inside the maidan. There was a demand for the release of the Raja. The pandemonium increased and the crowd became restive and even attached the Deputy Commissioner's. Ultimately firing was resorted to, leading to loss of a life and grave injuries to several. All this was the direct consequence of the irresponsible conduct exhibited by Shri A. D. Bali, Dy. S.P.

The only evidence which exists in support of the arrest of the Raja and his son outside Kala Kendra is on the police personnel and of the Magistrate Shri T. R. Sharma (CW. 127). All those witnesses were obviously interested to shift the venue of arrest from the temple of Raghunathji. That is why they spoke for the arrest of the Raja and his son at a spot outside Kala Kendra. In fact, all the remaining witnesses constituting very responsible persons, deposed before the Commission that the Raja and his son ran away to the temple of Raghunathji. Shri A. D. Bali Dy. S.P. and his men entered the temple and arrested them there. The witnesses who supported their arrests

outside Kala Kendra are Shri T. R. Sharma Magistrate (CW. 127), Shri A. D. Bali Dy. S.P. (CW. 128), Kulwant Singh H.C. (CW. 53), Tek Chand S.I. (CW. 57), Durga Singh S.I. (CW. 55), Chajju Ram S.H.O. (CW. 57), Kpoor Chand D.I. (CW. 58), Parma Nand S.I. (CW. 59), Mahant Ram C. (CW. 131) and Nika Ram H.C. (CW. 132). Besides them, three witnesses Ram Lal Soni (CW. 61), Roshan Lal (CW. 65) and Ved Vayas Passi (CW. 134) also stated for these arrests. The other witnesses from the public who were produced to support this version gave hesitating and halting statements in this regard. Pritam Singh municipal commissioner (CW. 84) wrote down in his affidavit that the Raja and his son had run away to the camp of Raghunathji and the witness saw them going to that direction. Similarly stated Prem Nath vice-president (CW. 85) in his affidavit. Before the Commission, however, these two witnesses resiled from their affidavits and said that they saw the arrest of the Raja and his son outside Kala Kendra. Sansar Chand (CW. 74) stated about the arrest outside Kala Kendra, but preferred to say that he had fallen unconscious and hence was not aware as to what took place subsequently. His was an admission and denial both at the same time. Jagdish Prasad president M.C. (CW. 135) and Tehal Singh reader to D.C. (CW. 97)—the witnesses admittedly present outside Kala Kendra—did not say about the arrest of the Raja and his son at that spot.

As against the above-noted witnesses chiefly constituting the Dy. S.P. and his police personnel, there is formidable array of witnesses who depose for the arrest of the Raja and his son inside the temple of Raghunathji. Raja Joginder Sen of Mandi (CW. 120) was present at the temple and he protested that Shri A. D. Bali, Dy. S.P. and his men should not enter the temple while wearing leather boots. He further protested that they should not handcuff the Raja of Kulu and his son when the latter were willing to accompany the police. According to the Raja of Mandi, the Raj Mata also protested the policemen that they should not take away her son, namely the Raja of Kulu. Besides this witness who belongs to a very respectable category, Lala Mehar Chand (CW. 54) president of the Bar Association, also stated that the Raja and his son were handcuffed inside the temple of Raghunathji and were paraded in that condition through the maidan. He also stated that the police had entered the camp of Raghunathji while wearing boots. He has corroborated the statement of the Raja of Mandi whom he did see at that place protesting for the arrest. The Raja of Kulu (CW. 119), of course, stated about his arrest inside the temple. He further stated that the Raja of Mandi had protested that the police should not enter the temple while wearing boots. The Raja of Kulu specifically stated that he was willing to accompany the police and told them that he should not be subjected to dishonour by being handcuffed and paraded through the maidan. Besides these witnesses, another respectable witness is Maj. Bhup Singh (CW. 81) and he also stated that the Raja of Kulu had entered the camp of Raghunathji, thereby denying his arrest outside Kala Kendra. The other important witnesses in this connection, whose presence inside the temple is very natural, are Durga Singh kardar (CW. 72), Tek Ram (CW. 67) member Raghunathji temple managing committee, Mangat Ram (CW. 73) pujari, Poshu Ram (CW. 71) who carries 'pankha', Neel Chand (CW. 68) who carries 'narsinga', Bali Ram (CW. 70) who does 'chakri' of Raghunathji, and Sobha Ram (CW. 69) 'nishan bardar' of Raghunathji. The other witnesses who came to support the entry of the police while wearing boots and the arrest of Raja, are CWs. 22, 23, 23, 25, 36, 37, 38, 39, 40, 41, 43, 44, 77 and 78. Chande Ram chhari bardar (CW. 42), Jodh Singh (CW. 79) and Sant Ram (CW. 82) also either stated that they had seen the Raja and his son going inside the camp of Raghunathji or that they had seen the two coming out of the camp in handcuffs and going

towards the Thana. These witnesses have further stated that the 'puja' and articles were scattered by the police and some of them state that 'danda' blows were given over such articles. It is difficult to believe that Shri A. D. Bali Dy. S.P. and his men entered the camp in order to insult the deity or that they scattered the articles by 'danda' blow to commit any act of sacrilege. As I have stated before, in a heat of passion, they had lost the sense of responsibility. Shri A. D. Bali commanded his men to enter the camp and make the arrest. While entering the camp, they had no occasion to think that boots should not be taken as the place was sacred. Despite protests, they handcuffed the Raja and his son and taught them a lesson by parading them in that condition inside the maidan. Perhaps Shri A. D. Bali, Dy. S.P., considered that the majesty of police was at stake and that law and order demanded immediate arrest of the Raja and his son. In my opinion, he was dominated by passion rather than reason, to, by a spirit of revenge rather than a spirit of reverence to law and order. The officer did not exercise proper discretion and in fact, he made the situation to grow worse resulting in more serious consequences.

The Municipal Committee, Kulu, passed a resolution on 20-10-1971 (Ex. B. 18) and in that resolution, they specifically mentioned the entry of the police while wearing boots inside the temple of Raghunathji. They expressed resentment for this act of sacrilege on the part of the police personnel and demanded judicial enquiry. Similarly the resolution of the Bar Association passed on 7-10-1971 (Ex. A. 72) also pointed out the act of defilement and pollution committed by the police, meaning thereby that they had entered the temple of Raghunathji while wearing leather boots. These documents, therefore, support the version that the Raja and his son had come to the camp of Raghunathji and were arrested from there. Otherwise the police had no occasion to enter that camp while wearing boots.

The learned Advocate-General pointed out that Durga Singh (CW. 72) kardar of the temple, filed the complaint for entry by police wearing boots 22 days after the occurrence. According to learned counsel, this delay by itself proves that the incident was not correct. I do not subscribe to this view in the face of so much evidence to the contrary. The filing of the complaint might have been delayed because of so many other reasons. Durga Singh kardar (CW. 72) was not personally injured and shared the feelings with the others. It is only when the others thought proper to file a complaint, that Durga Singh came forward and actually instituted the complaint.

LATHI-CHARGE IN THE MAIDAN

The Raja of Mandi (CW. 120) has stated that he accompanied the Raja of Kulu and his son upto some distance in the maidan. The two were being taken in handcuffed condition. The Raj Mata of Kulu appealed to the policemen on duty that the Raja of Kulu and his son should be released and should not be taken in that condition to the police station. According to the Raja of Mandi, the Raj Mata was pacified by the Raja of Kulu, although she was in a great agitated condition. The Raja of Mandi had to leave the Raja of Kulu and his son, and he went along with the Raj Mata to her own camp lest she might commit any indiscreet act. Seeing all this, the crowd naturally became very disturbed. There were slogans that the Raja should be released. The public was anticipating the performance of "lanka daihan" ceremony. The said ceremony could not be performed without the Raja and, therefore, there was great agitation. The crowd in the maidan at that time was to the tune of 3,000 to 4,000 persons. The mischief was already in the air and the police had to resort to lathi-charge not with the intention of beating anybody but

with the intention of deriving away the people. There were rows of shops in the maidan itself. The authorities naturally feared that these shops might not be looted. Some ugly scenes were already witnessed and the lathi-charge in such a situation could even be justified. At the same time, there is no evidence to indicate that anybody was actually beaten by lathi or received injury due to lathi-charge. It may, therefore, be held that no force was actually applied inside the maidan to keep the crowd under control. Therefore, it is futile to ascertain if the force applied was excessive or justified. The lathi-charge that was made was intended to scare away the people. The lathi-charge was not made to beat them down.

Lala Mahar Chand Advocate (CW. 45) did see lathi-charge being administered outside the camp of Raghunathji. Maj. Bhup Singh (CW. 81) another responsible witness, gave graphic account of the lathi-charge and it is not difficult to conclude from his statement that the purpose of lathi-charge was to scare away the people and not to beat them. The policemen used to wave lathis and the people used to run away due to fear. They used to collect again to face another waving of lathis by the policemen to scare them away. The witnesses C.Ws. 9, 24, 36, 37, 38, 39, 40, 41, 43, 44, 47, 67, 68, 69, 70, 71, 72, 73, 74, 77, 78, 79, 82, 89, 118, 119, 121, 123 and 136 were produced to support the public version. They have all stated for the lathi-charge being administered inside the maidan. Amongst the witnesses who came to support the police version, Jai Gopal (CW. 26) and Thakur Dass (CW. 100) have also stated about the lathi-charge. The latter stated that the crowd had become violent and therefore the lathi-charge was made. It is significant that Shri A. D. Bali, Dy. S.P. (CW. 128) did not deny lathi-charge that was given inside the maidan. Except Kapoor Chand S.I. (CW. 58), no other police witness denied this lathi-charge.

The abovenoted evidence proves beyond doubt that lathi-charge was administered inside the maidan. But since no substantial injuries by lathis were received by people, it can be stated that the lathi-charge was a mere show of force and not actual application of force.

FIRING IN MAIDAN

Most of the witnesses named above, who came to support the public version, also stated that firing was done by police inside the maidan. But that does not appear to be correct. The statement of Lala Mehar Chand Advocate (CW. 45) is significant in this connection. He could not state as to whether any firing was at all made by the police inside the maidan. Similarly the Raja of Mandi (CW. 120) stated that he heard gun-shots at some period of time while he followed the Raja of Kulu and his son who were being taken by the police handcuffed condition. He never stated that he actually saw any policemen firing inside the maidan after the arrest of the Raja. Had the police resorted to firing, they would have been in possession of the proper record showing the consumption of cartridges and return of empty cartridges. Such a record is not to be found. Maj. Bhup Singh (C.W. 81) also did not state about the firing inside the maidan. He would have been the first person to depose about the firing had it actually taken place inside the maidan. He has already given a graphic account of the lathi-charge made by the police. It seems the other witnesses have stated about the firing in their enthusiasm to substantiate hardship committed by the police. I am, therefore, inclined to believe that no firing was made by the police inside the maidan.

As to the looting of shops, there is the solitary statement of Sant Ram (CW. 82) who claimed that the policemen had entered his shop and had beaten him. At that time someone had taken away Rs. 3,000 from his box. The statement is hardly of any credence. The witness did not report the theft to the police. No case was registered regarding such a theft. He seems to have concocted a story regarding theft. It was also suggested that Thakur Beli Ram and Shri Dogra, Advocates, gave speeches inside the maidan to instigate the crowd. This too seems to be an incorrect version because except Sant Ram (CW. 102) and Balak Ram, (CW. 109), no other witness came to state that these two Advocate gave any speeches inciting the crowd. These witnesses seem to have been procured to say something against these two Advocates and their statements are not convincing. Therefore it can be stated that no looting was done inside the maidan. Similarly no speeches were delivered by Thakur Beli Ram or Shri Dogra, Advocates, inside the maidan inciting the crowd to commit acts of mischief.

ATTACK ON DEPUTY COMMISSIONER'S COURT BUILDING

The mob that had collected in the maidan demanded the release of the Raja. The number had swelled to at least two to three thousand. Shri I. K. Suri, I.A.S. (CW. 126), Shri K. K. Bhargava, I.P.S. (CW. 124), Shri T. R. Sharma, S.D.M. (CW. 127) and Shri A. D. Bali, Dy. S.P. (CW. 128) have all estimated the crowd to be three thousand or even four thousand. Besides the, CWs. 55, 56, 57, 58, 90, 91, 95, 96, 100, 101, 102, 110, 131 and 132 who came to support the police version, have also estimated in a like manner, From amongst the witnesses produced to support. The public version, Lala Mehar Chand Advocate (CW. 45), Shri Yagya Chand Advocate (CW. 48), Maj. Bhup Singh (CW. 81) and CWs. 79 to 117 also estimate the crowd to be of two to three thousand, Shri Tej Singh Advocate (CW. 46), however, estimates the number to be of four to five thousand. Several hundreds out of them were pelting stones and other missiles over the Court building. Shri T. R. Sharma S.D.M. (CW. 127) stated that 300 or 400 persons were pelting stones and other missiles. S. N. Acharya Steno (CW. 91), Nika Ram H.C., (CW. 132) and Sansar Chand Gandhi (CW. 74) gave similar statements. The last named witness was produced to support the public version. Sangat Ram (CW. 102), however, stated that about 120 persons were pelting stones and missiles.

There is overwhelming evidence to support the police version that the crowd had become violent and that they were attacking the court building. Missiles like stones, empty bottles and 'jungla' pieces were thrown. According to Shri A. D. Bali, Dy. S.P. (CW. 128), burning faggots were also thrown. Mahant Ram (CW. 131) and Nika Ram H.C., (CW. 132) stated that the crowd had threatened to burn the building to ashes. According to Shri I. K. Suri, I.A.S. (CW. 126) and Shri T.R. Sharma, SDM (CW. 127), the slogans raised were, that the Raja should be released otherwise the building would be burnt to ashes. Shri I. K. Suri, I.A.S. (CW. 126); Shri K. K. Bhargava, I.P.S. (CW. 124); Shri T. R. Sharma S.D.M. (CW. 127); Shri A. D. Bali, Dy. S.P. (CW. 128); Tek Chand, A.S.I. (CS. 54) incharge of firing squad; Ghamanda Ram H.C. (CW. 64) incharge of teargas squad; Shri Kapoor Chand, D.I. (CW. 58); Ishari Prasad Superintendent D. C. Court (CW. 90); S. N. Acharya, Steno D.C. (CW. 91) and Tehal Singh, reader D.C. (CW. 97) who were admittedly witnessing the occurrence, have all stated about the pelting of stones and other missiles. Besides them, CWs. 53, 55, 56, 57, 59, 61, 65, 66, 94, 96, 100, 101, 102, 108, 109, 110, 111, 131, 132,

and 139 have all stated about the pelting of stones and other missiles over the Court building. From this list of witnesses, Parma Nand S.I. (CW. 59), Mohinder Singh H.C. (CW. 66) and Sat Pal C. (CW. 139) actually received injuries by the pelting of stones. All these witnesses, of course, stated that the glasspanes of the windows and the doors of the building were broken. Shri Ishari Prasad Supdt. D.C. (CW. 90) further stated that a large stone was found lying over the glass sheet placed on his table and the glass-sheet was broken to pieces. This witness also proved the photographs (Exs. A. 55 to A. 70) which disclose the extensive damage caused to the building. Shri Prasad (CW. 90) is supported by Shri T. R. Sharma, S.D.M. (M. 127) who actually saw the said glass-sheet in broken condition and a big stone was found lying over it. According to Shri Sharma, the Court compound and the verandah of the Court Room were giving the appearance of a "khud". This would indicate the extent to which the pelting of stone-pieces and other missiles were resorted to. From amongst the public, it is very significant, the witnesses although did not state about the pelting of stones and other missiles, yet admitted, that they did see the glass-panes and Court 'jungla' in broken condition either on that very day or on a day or two thereafter. Lala Mehar Chand Advocate (CW. 45) could only state that in his presence no stones were pelted nor jungla was broken. He did not care to see the condition of window-panes and jungla on 6-10-1971. However, on 7-10-1971 he found them in broken condition. Shri Tej Singh Advocate (CW. 44) could not tell if the pelting of stones and missiles actually happened before he came to stand near the Bar Room from where he saw the occurrence. He too noticed after 4 or 5 days that the panes of the doors and windows were in broken condition. Shri Bhupinder Singh Advocate (CW. 47) similarly stated that he did not care to see if the panes of doors and windows or jungla were broken on 6-10-1971, but he happened to see them after 3 or 4 days and found them in broken condition. Shri Yagya Chand Advocate (CW. 48), however, did see the condition of jungla on that very date and found it in broken condition. His surmise is that people must have rushed over it. Sansar Chand Gandhi (CW. 74) admitted that stones and other missiles were pelted over the Court building. Thakur Beli Ram Advocate (CW. 117) also saw the panes and Jungla in broken condition on 8-10-1971. Lalit Kumar (CW. 121) did see the panes etc., in broken condition although he did not see the pelting of stones etc. The other witnesses CWs. 37, 79, 81, and 82 did not care to see if the panes and the jungla were actually broken as a result to the pelting of stones and other missiles. So the witnesses produced to support public version could only go this far to deny the pelting of stones and other missiles. It is not difficult to hold, in the circumstances, that stones and other missiles were thrown. May be, burning faggots were also hurled and attempt was made to burn the building to ashes. It is also evident that the Magistrate as well as the police officials were in the immediate danger of being attached and seriously injured. The crowd was sufficiently large in number. The arrest of the Raja and his son and the manner in which they were paraded in the maidan while wearing handcuffs, had infuriated the mob. There is no dearth of mischief-mongers and sufficient excitement already existed to kindle the flame of riot and violence. This was the predicament in which the Magistrate and the police party were placed inside the Court compound.

STRENGTH OF POLICE—COURT COMPOUND

It would then be necessary to know the strength of police party was deputed inside the Court compound. Besides the Magistrate and the

Dy. S.P., there were 30 or 40 policemen and some Homeguards to support them. The firing squad as well the tear-gas squad were also there. The number was hardly sufficient to cope with the situation. Shri T. R. Sharma, S.D.M (CW. 127) has given the figure as 30 to 40 constables besides the firing squad who were deputed on duty inside the Court compound. According to Nika Ram H.C. (CW. 132), there must be in all about 100 or 150 police personnel and Homeguard present inside the Court compound. So stated Jodh Singh (CW. 97). The other witnesses who came to support the police version, namely CWs. 54, 55, 58, 91 and 96, stated that the number was 30 to 40. From amongst the public witnesses, Shri Tej Singh Advocate (CW. 46) and Maj. Bhup Singh (CW. 81) both stated that the number was near about 40. Thakur Beli Ram Advocate (CW. 117) preferred to state that the number was 50. The witnesses Nika Ram H.C. (CW. 132) and Jodh Singh (CW. 97) seem to have exaggerated the number.

D.C., S.P. NOT IN COURT COMPOUND

Inside the Court building of the D.C., it is established beyond doubt that the D.C., himself or the S.P. were not present. A clumsy attempt was made to prove by a few witnesses produced to support the public version, that these two officers were present inside the Court Room and that they actually incited the police party to fire towards the crowd and kill Shri Charan Dass Dogra, Advocate. Reference is made to the statement of Tek Ram (CW. 80) and Lalit Kumar (CW. 121). The former stated that the D.C. and the S.P. came out in the verandah from the room of the Superintendent and told a Sardar constable, pointing towards Shri Charan Dass Dogra Advocate, that the latter should be fired at and shot dead. The other witness Lalit Kumar (CW. 121) although stated that the D.C. and the S.P. did come out of the room of the Superintendent yet, according to him, they did not talk with any Sardar constable, nor did they ask any one to shoot at Shri Dogra. It is significant that in their affidavits, these witnesses did not mention about this fact and so it can be concluded that the incident has been falsely concocted by them. The witnesses may be branded as liars and their statements cannot be believed in the face of overwhelming evidence to support the version that the S.P. and the D.C. were both sitting in the office-room of the S.P. at the time of firing. Even from the public side, Lala Mehar Chand Advocate (CW. 45) and Shri Tej Singh Advocate (CW. 48) both stated that they did not see the S.P. or the D.C. anywhere on 6-10-1971. Shri Yagya Chand Advocate (CW. 48) inadvertently stated that he saw the D.C. sitting in his Court Room at that time, but later on corrected himself by saying that he did not actually go to see him there. He meant to state that somebody might have informed him like that and the information was patently incorrect. N. C. Bala Rajan (CW. 89) merely stated that the S.P. and the D.C. had gone to the Court compound from the Mall Road. The witness is *prima facie* unreliable. He said that the police of Kulu wants to kill him and a reward of Rs. 1,400 has been set up for his head. This is a fantastic statement which totally incredible. The Raja of Kulu (CW. 119) stated that he saw the S.P. and the D.C. near the Court Room, but his memory seems to have failed him because he himself was not present at the time of firing and was interned in the judicial lockup at that time. Shri I. K. Suri, I.A.S. (CW. 126) and Shri K. K. Bhargava, I.P.S. (CW. 124) have both stated that they had gone to Kala Kendra after hearing the gunfire and from there they came direct to the office of the S.P. and were sitting there when the firing incident took place inside the Court compound. They had no doubt attempted to reach the spot, but could not do so because the

mob had collected in large number in between the office of the S.P. and the Court of the D.C. and it was impossible for them to have pierced through this mob in order to reach the spot. Apart from this, the occurrence itself did not take long to finish and these two officers were taken by surprise and were really helpless to do anything.

TALKS WITH COMMANDANTS, S.S.B. AND I.T.B.Ps.

In this connection, reference can be made to the talk which the S.P. Shri K. K. Bhargava, I.P.S. (CW. 124) and the D.C. Shri I. K. Suri, I.A.S. (CW. 126) had on telephone with Shri Budhi Singh, I.P.S. (CW. 99) Commandant of the S.S.B. and Col. Grewal Commandant I.T.B.P. in the midst of the occurrence. Both the S.P. and the D.C. stated that the situation had turned pretty serious and the Magistrate and the police party were entrapped by the mob so much so that their personnel safety was in danger. The two officers, therefore, approached the Commandant S.S.B. and the Commandant I.T.B.P. for extra help so that the Magistrate and the police personnel could be extracted out of the fury that was being committed by the mob. Shri Budhi Singh, I.P.S. (CW. 99) supported these two officers by saying that he did receive their message and his letter (Ex. P. 68) indicates that he really made available a part of his battalion to safeguard the situation. This letter makes a reference to the telephonic talk which the S.P. had already had with him. These talks which the D.C. and the S.P. had with Col. Grewal, Commandant I.T.B.P. and Shri Budhi Singh, I.P.S., Commandant, S.S.B., amply prove that the situation had become worse and the Magistrate and the police party were in real physical danger at that time. Harwant Singh H.C. (CW. 92), Pritam Singh H.C. (CW. 93) and Madan Lal Gupta head Clerk (CW. 96) have corroborated the statements of the D.C. and the S.P. in this regard.

BAIL GRANTED

The situation had so much deteriorated, that the S.D.M. and the Dy. S.P. thought it proper to release at once the Raja on bail. Thakur Beli Ram Advocate (CW. 117) had already arrived. The other two Advocates Shri Tej Singh (CW. 46) and Shri Bhupinder Singh (CW. 47) drafted the bail application and moved it before the Judicial Magistrate. The latter ordered for police report and fixed one-hour time for such a report to arrive. In the meantime, the S.D.M. thought that he should not wait but grant bail immediately. According he left the spot with a direction to Shri A. D. Bali, Dy. S.P. (CW. 128) to deal with the situation in the best manner possible. The Magistrate came to his Court Room and drafted the bail order. Thakur Beli Ram and others had already arranged for the sureties and arrangements were being made to get released the Raja and his son. In the meantime the Magistrate heard in his Court Room that firing was resorted to by the police.

FIRING IN COURT COMPOUND

According to Shri A. D. Bali, Dy. S.P. (CW. 128), the police party was in real physical danger. The crowd consisting of more than three thousand, was continuously throwing missiles over the Court building. They were even threatening it to be burnt to ashes. The Police constables were somehow saving themselves from getting injured. The incharge tear-gas squad was first asked to throw the shells in order to disperse the crowd. It was discovered that the direction of the wind was unfavourable. The gas would have affected the eyes of the constables themselves. Therefore, the tear-gas squad showed inability to throw the shells. According to Shri A. D. Bali (CW. 128), in

the circumstances, he directed the incharge of the firing squad to fire nine rounds, which they did by their 303-bors rifles. The police version is that the firing was done in the air and therefore no force was really applied. But this does not appear to be correct. It was, in fact, a firing directed towards the crowd and one person by name Girdhari Lal fell down dead. Three others received injuries and on the persons of two of the, definite bullet injuries were detected. These persons are Bhagat Ram (CW. 37) and Tek Ram (CW. 80). In facts, there is no police rule to justify any firing in the air. If firing is at all to be done, it has to be effective and upon the crowd.

FIRING FROM THE TENT OF THE RAJA

A futile attempt was made on behalf of the police to prove that the constables fired in the air and that the actual firing upon the crowd was made from the tent of the Raja of Kulu. In other words, the casualties were attributed to that firing which, according to police version, took place from inside the tent of the Raja of Kulu. The Commission can only remark at this stage, that the police was ill-advised to support such a false version. The Dy. S.P. Shri A. D. Bali (CW. 128) and his police officials should not have been tempted to take up such a distorted version, which ultimately fell through, as it could be demonstrated that the witnesses who spoke about the firing from the tent of the Raja spoke deliberate lies. The peculiar feature is that firing from the tent of the Raja was never set up in official documents at the initial stage of the dispute. It is not to be found in the joint report (Ex. C. 26) submitted by the S.D.M. and the Dy. S.P. not in the wireless message (Exs. C. 11 and C. 12) sent by the D.C. and the S.P. to the Government. Shri A. D. Bali, Dy. S.P. and his men did not even tell to anyone soon after the occurrence about the firing which they saw from the tent of the Raja. It appears, such an important event was left out to be stated at a such later stage. It is not difficult to infer that a clumsy attempt was made to explain away the injuries and as advised, the witnesses took up the defence that the firing was made from the tent of the Raja. The event being of so much importance could not be left out from being disclosed at the initial stages and the reason that they forgot to tell about it cannot be accepted. Rather the information was sent out that one man died and a few were injured as a result to police firing. In this connection, reference may be made to the news, items (Ex. C. 18 and C. 19) which appeared in the newspapers. In the Statesman of 9-10-1971, it was mentioned that the Government affirmed the version that one person and not more than one was killed as a result to police firing. In most of the affidavits submitted before the Commission, the witnesses did not mention about the firing from the tent, but the same witnesses did state before the Commission that they had seen that firing. Even otherwise, circumstances are established which disprove that any firing was made from the tent of the Raja. If the constables really saw some persons firing from there, Shri A. D. Bali, Dy. S.P. would have certainly raided the tent of the Raja then and there and might have even arrested those persons. On the other hand, no raid was made and the tent was not searched immediately after the occurrence. The guns and the rifles of the Raja were seized but only two months after the occurrence. The Dy. S.P., however stated that after 3 or 4 days of the incident, he made a search inside the tent. Perhaps the tent itself might not have been in existence at that time. There is another interesting feature which believes the statements of the witnesses. They saw a trail of smoke coming out of the barrels of the guns as a result to that firing and according to some of the witnesses, the said trail of smoke went upto 5 to 10 yards. This is all fantastic because no trail of smoke could

emit from the barrial upto such a distance. According to Dr. O. P. Chugh (CW. 116) Director, Central Forensic Science, such a trail of smoke could not emit from the barrels of the guns. The entire story seems to have been concocted by the witnesses. This has really undermined their prestige and the Commission can only state that the witnesses were ill-advised to give out such false statements. The police could have very well taken the responsibility for the firing that had to be made upon the crowd in the interest of law and order and also to safeguard Government property. I can only wish that the Dy. S.P. and his police officials should have stuck to a straight defenc of firing towards the crowd in public interest.

The police witnesses who stated about the firing from the tent of the Raja are Shri A. D. Bali, Dy. S.P. (CW. 128) and CWs. 53, 54, 55, 57, 58, 59, 64, 94, 96, 131, 132. These are all police officials. They have given discrepant statements. Some stated that the firing came from the crowd, while others stated that they actually saw barrels of the guns protruding from the tent of the Raja and smoke coming out of such barrels. Kulwant Singh H.C. (CW. 53), Tek Chand A.S.I. (CW. 54), Kapoor Chand D.I. (CW. 58), Parma Nand S.I. (CW. 59), Ghamanda Ram H.C. (CS. 64) and Shri A. D. Bali, Dy. S.P. (CW. 128) did not actually see any person firing from there. At the same time, they stated that the fires were made from the crowd and some of them stated that firing came from the tent of the Raja. Tek Chand A S I. (CW. 54) stated that the sound appeared to be of a muzzle-load gun or 12-bore gun or a pistol. His statement that the sound appeared to be from a pistol appears to be *prime facia* wrong. Durga Singh A.S.I. (CW. 55) stated that one man was shotting his gun from the tent, Mahant Ram (CW. 131) on the other hand stated that 2 or 3 persons were holding rifles and were firing from there, Similarly stated Nika Ram H.C. (CW. 132). Shri A. D. Bali, Dy. S.P. (CW. 128), preferred to state that the crowd possessed fire guns and meant to state that the fire-guns were fired from the tent of Raja Durga Singh A.S.I. (CW. 55), Chajju Ram S.H.O. (CW. 57), Madan Lal Gupta H.C. (CW. 96) and Mahant Ram C. (CW. 131) did not mention about this firing in their affidavits. Mahant Ram C. (CW. 131), however, mentioned in a general manner about the firing in his affidavit. He too did not give the other details. None of these witnesses told any body after the occurrence that they could see the firing that was made from the tent of the Raja. Durga Singh A.S.I. (CW. 55) stated that some firing was even made from the direction of Kulu abadi and from the opposite direction, i.e. Mandi side. This witness stated for the first time in Court that he saw the smoke coming out of the gun. Chajju Ram S.H.O. (CW. 57) cannot tell if anyone died because of that firing. Parma Nand S.I. (CW. 59) cannot tell the direction of the firing although he saw the smoke coming out of the tent. Ghamanda Ram H.C. (CW. 64) cannot even tell the place from where firing was made. He is, however, definite that the shots came from the crowd. Madan Lal Gupta H.C. (CW. 96) preferred to state that the shots were made from the maidan. He did not even name the tent of the Raja. Nika Ram H.C. (CW. 132) stated that the smoke was as if somebody was puffing cigarette. It is again a fantastic statement. Chajju Ram S.H.O. (CW. 57), Parma Nand S.I. (CW. 59) and Shri A. D. Bali, Dy. S.P. (CW. 128) stated that the said firing was simultaneous along with the police firing. The other witnesses Madan Lal Gupta H.C. (C.W. 96) and Mahant Ram C. (CW. 131), however, stated that the said firing was made 4 or 5 minutes after the police firing was over. According to the witness Mahant Ram C. (CW. 131), the fire shots were made each with an interval of two minutes, meaning thereby that the firing went on upto 10 minutes after the police firing was over. According to Tulsi

Ram (CW. 94) another police official, four shots were made with in an interval of 5 to 10 minutes. If Mahant Ram C. (CW. 31) is believed and the said firing started 5 minutes after the police firing was over, the same must have continued, according to Tulsi Ram (CW. 94), for about 40 minutes, all this is simply unbelievable.

A few witnesses from public were also produced to support this version of the police and these witnesses are CWs. 56, 65, 97, 100, 101, 102, 108, 110 and 111. These witnesses too suffer from the very same defects which I have pointed out above in the case of the police witnesses. Didar Singh (CW. 56) cannot even tell if Girdhari Lal died as a result to that firing from the crowd. Thakur Dass (CW. 100) at first stated that the gun-shots came from the maidan side, but later on resiled that statement. He saw smoke coming from behind the shops in the middle of the maidan. According to him, the smoke lasted for 2 to 4 minutes. If the said smoke was from the barrels of the guns, it is difficult to believe that duration of the smoke was 2 to 4 minutes. Paras Ram (CW. 101) stated that the above smoke came towards the Court compound. He did not mention anything about this in his affidavit. According to him, the trail of smoke came up to a distance of 5 feet away from the edge of Mall Road. The tent of the Raja was 60 to 70 yard away from that spot. The witness obviously spoke a deliberate lie and could not be believed. Sangat Ram (CW. 102) similarly did not mention anything about this firing in his affidavit. He stated that he forgot to mention about it. Before the Commission, however, he stated that he saw the barrels of the gun coming out of the chinks of the 'Qanats' of the tent and heard the shots. He did not tell about this to any person, after the occurrence. According to Tej Ram (CW. 108), five shots came from the tent while a few other shots were made from the maidan. He also saw a trail of smoke upto 3 to 5 years and for about 5 minutes. This is again a false statement. In his affidavit, however, the witness stated that he heard only two shots. K. C. Katoch (CW. 110) confined his statement by saying that two gun-shots were made from the maidan side. He could not tell from where the two shots came. According to him, these shots were made after the police firing was over. Gorkhu (CW. 111) did not hear any gun-shot but still he could see a trail of smoke coming out of the tent upto 15 yards away from it. This is again a cock-and-bull story. So this is the police version regarding the firing from the tent of the Raja.

The witnesses Shri Ishri Prasad Supdt. D.C. (CW. 90) and S. N. Acharya steno D.C. (CW. 91) appear to be more sensible. They were very much present inside the Court building but they did not succumb to the temptation of speaking about the firing from the tent of the Raja of Kulu. Had that firing taken place, they would have been the first persons to know about it.

More dependable witnesses spoke on behalf of the public and they denied that any firing was made from the tent of the Raja. Lala Mehar Chand Advocate (CW. 45), Shri Bhupinder Singh Advocate (CW. 47), Shri Yagya Chand Advocate (CW. 48), Maj. Bhup Singh (CW. 81) and Thakur Beli Ram Advocate (CW. 117) were admittedly present. They did not depose about any firing from the tent of the Raja. Some of them were present very near the spot where Girdhari Lal fell down. According to them, the bullet came from the direction of the police. Maj. Bhup Singh (CW. 81) was deposite that the bullet came from the police rifle, and he even heard whistling sound which is usual from a shot by 303 rifle. According to Shri Bhupinder Singh Advocate (CW. 47), Yagya Chand Advocate (CW. 87) Jodh Singh (CW. 97), Thakur Beli Ram Advocate (CW. 117) and the Raja of Mandi

(CW. 120), the 'Qanats' of the tent were in fact trampled over by the people and were lying flat over the ground. How could the barrels of guns protrude through the chinks of these 'Qanats' for which the police witnesses stated? It is also significant that no suggestion whatever was made to the Raja of Kulu (CW. 119) that he had brought guns and rifles to his tent and his men fired them from there.

The Raja of Kulu in his deposition stated that he had seen one or two constables carrying 12-bore guns. The statement is neither here nor there. No policemen fired by a 12-bore gun. These guns might have been removed by the police officials of the Thana for some other purpose. The learned Advocate-General argued on the basis of this statement of the Raja of Kulu that the public version at one stage was that a 12-bore gun was fired from the police-side and the man was killed. In fact the nature of injuries received by the deceased and the two living Bhagat Ram (CW. 37) and Tek Ram (CW. 80) do indicate that the firing was made by 303 rifles. Thus the statements of witnesses CWs. 53, 54, 55, 57, 58, 59, 64, 131, 132, 138, 139 and 128 (police officials) and of CWs. 65, 100, 101, 102, 108, 109, 110, and 111 (other than police officials) are wrong and incorrect in this respect. The two witnesses Bhagat Ram (CW. 37) and Tek Ram (CW. 80) who really received the injuries, very much stated that the bullets were fired by the policemen and they received the injuries. There is no reason to disbelieve them. Shri Tej Singh Advocate (CW. 46), Shri Bhupinder Singh Advocate (CW. 47), Shri Yagya Chand Advocate (CW. 48), Jodh Singh (CW. 79), Tek Ram (CW. 80), Maj. Bhup Singh (CW. 81), Lalit Kumar (CW. 121) and Subhash Sharma (CW. 123) were standing very near Girdhari Lal and they could certainly tell from where the bullet came which hit him so that he fell down. All of them stated that the firing was made by the police. There is no reason to disbelieve these witnesses many of whom are quite respectable.

It is, therefore, concluded that no firing was made from the tent of the Raja, nor any firing was made from any direction inside the maidan. The only firing made was, by the police constables constituting the firing-squad deputed within the compound of the Deputy Commissioner's Court building.

BALLISTIC EXPERT

From the body of the deceased Girdhari Lal two mutilated pellets were recovered. The said pellets were sent in a sealed cover on 22-10-1971 to Dr. O. P. Chugh (CW. 116) Director, Central Forensic Science, Government of India, New Delhi, for examination and report. Alongwith these pellets, five parcels were received by Dr. Chugh on 3-12-1971. These parcels contained 3 rifles and 2 guns recovered from the Raja of Kulu. Dr. Chugh was asked to give his opinion as to whether these two pellets were fired from these rifles and guns. His report dated 31-12-1971 (Ex. B-42) indicates as below:—

"(1) The type of weapon through which the two small lead-pieces have been fired cannot be ascertained.

(2) The range and direction of fire would not be determined for want of sufficient data."

Dr. Chugh could only opine on 10-1-1972 (Ex. B-41) that the gun and rifles (of the Raja of Kulu) sent to him for examination were no doubt used in firing but no opinion could be given regarding the time of their last firing. He further reiterated before the Commission that no definite opinion could

be given regarding the firing of the two mutilated pellets from these weapons.

It is, therefore, evident that the opinion of the ballistic expert did not confirm that the two metallic pellets recovered from the body of the deceased, were actually first from the guns and rifles of the Raja. It is very significant to note in this connection that no rifles of the Police (303-bore) was sent to the ballistic expert for opinion with reference to these two mettalic pellets as to whether these were fired from any one of the police rifles. Thus the probability of the two metallic pieces having been fired from the Police rifles cannot be denied. There is further a presumption to be drawn against the police, to the effect that the two metallic pieces formed part of bullet fired from any conversant with this, purposely omitted to sent those rifles for ballistic examination.

One of the mettalic-pieces was sent to Dr. V. N. Sehgal (CW. 115), Assistant Director (Physics), C.B.I., New Delhi for report as to his components. His report (Ex. B-43) indicated that the said metallic-piece is made of lead with impurities of antimony bismuth and contained traces of 'nickle, copper, tin, silver, aluminium, iron, sillics and magnesium. Dr. V. N. Sehgal (CW. 115) when examined before the Commission could not testify that the said metallic-piece was really fixed from 303-rifle or shot-gun or any other gun or rifle. According to him, these elements are also found in steel-jacketed or copper-jacketed bullet usually fired by 303-rifle. Therefore, it is indicated by the report of the Assistant Director (Physics) that the said metallic-piece could even be a component of a jacketed bullet fired by 303-rifle.

Dr. Chugh (CW. 116) when examined before the Commissioner, was asked about the type of bullet of which the two mettalic-pieces were components. He stated that the type of bullet could not be determined.

The Police authorities also sent to Dr. Chugh (CW. 116) the injury-report as well as the X-Ray report of Bhagat Ram (CW. 37) who admittedly received gun shot injuries. They wanted a report from him as to whether these injuries could be caused by a 12-bore gun or a 'short-gun or a rifle of the bore possessed by the Raja. The letter of the S.P. in this connection is Ex. B 45 and the report of Dr. Chugh dated 5-1-1972 is Ex. B-48. The said report is rather against the police version. Dr. Chugh was definite in his opinion that the wounds of Shri Bhagat Ram (Ex. 37) as described in his medical report and X-Ray report, could be caused by 303 bullet. Therefore, it is proved that Bhagat Ram (CW. 37) was also shot at by police rifle.

The authorities, for reasons best known to them, not get the opinion of ballistic expert for the injuries received by Tek Ram (CW. 80). Perhaps they thought that Dr. L. K. Singh (CW. 112) M.O. Civil Hospital, Kulu, was prepared to oblige them by saying that these injuries were caused by 303-rifle was therefore they did not care to obtain the opinion of the ballistic expert.

Thus the reports of the ballistic expert as well as of the Assistant Director (Physics) C.B.I., denied the police version that any rifles or guns were shot from the tent of the Raja, and further proved the public version that the injuries received by Girdhari Lal (deceased) Bhagat Ram and Tek Ram were caused by shots fired from 303-rifles utilised by the police in this firing.

MEDICAL EVIDENCE

Dr. L. K. Singh (CW. 112) M.O. Civil Hospital, Kulu, examined the injuries of Sansar Chand Gandhi (CW. 74), Bhagat Ram (CW. 37) and Tek

Ram (CW. 80). All these three witnesses stated before the Commission that they were standing in the maidan and were fired at by the police from the Court compound. On 6-10-1971 Sansar Chand Gandhi and Bhagat Ram were examined and on 7-10-1971 Tek Ram was examined. Sansar Chand Gandhi had received four bruises (Ex. B. 62) and these bruises could have been caused by the grazing of the bullet or even by his fall on the ground. On the person of Bhagat Ram (CW. 37), two gun-shot injuries, one wound of entry and the other wound of exit, were discovered (Ex. B-63). There is no difficulty in holding that these injuries were caused by 303-rifle shot. Dr. L. K. Singh admitted this fact. Besides him, the report (Ex. B-48) of Dr. Chugh is also clear on this point. As to Tek Ram (CW. 80), he had received five lacerated wounds and two abrasions. His injury report was not sent to Dr. Chugh and, therefore, no opinion of ballistic expert was obtained regarding him. Dr. Singh (CW. 112), however, stated that these gun-shot injuries were not caused by 303-rifle. His knowledge about fire-arms is based on Modi's Medical jurisprudence. He has obtained his medical degree in 1966 and has done only 5 or 6 fire-arm cases uptill now. Therefore, the experience of Dr. Singh is rather immature and he could not formulate any opinion regarding the type of weapon used for causing these injuries. Dr. Singh cannot tell the components of a steel Jacketed bullet which is usually fired by a 303-rifle. He has not mentioned in his report (Ex. B-9) as to whether any foreign material or any metallic piece was at all found inside the wounds of Tek Ram (CW. 80). But in the X-Ray plate of Tek Ram (Ex. B-86), there is a V-shaped shadow which is definitely of some foreign body. It has not been possible to extract this foreign body. The injured Tek Ram (CW. 80) has not yet recovered from the wound that he had received, although he was referred to Safdarjung Hospital, Delhi, for treatment. Dr. Singh could not help stating that the shot fired at Tek Ram (CW. 80) must have been of a high velocity and this feature confirms with a shot fired by 303-rifle. Dr. Singh relied upon a passage from the book of Modi, where in it was written that bullets of great velocity usually pass straight and direct through the body without any deflection or deviation and without causing much damage. Since this was not the condition of the wounds received by Tek Ram who received a number of lacerated wounds, the doctor opined that the injuries were not caused by 303-rifle. The very same passage from the book of Modi also contains that as a result to shots by muzzle-loading guns, irregular missiles such as pieces of stone, iron kankar, beads of brass or nickel anklets or wristlets, seeds etc. are found which cause the lacerated wounds. As I have pointed out above, Dr. Singh did not care to write down if any such irregular missile was discovered inside the body of Tek Ram. Therefore, it could not be stated that these wounds were necessarily caused by shot gun or a muzzle-loading gun. The deflection or deviation of bullet could have been caused by the striking of the bullet upon a bone and a fragment of such bullet could possibly be retained inside the body. There is already a 'V'-shaped shadow at the place of injury and it would be one such fragment. Therefore, it cannot be affirmed with any amount of certainty that the injuries caused upon the person of Tek Ram (CW. 80) were actually caused by rifle or shot gun from the tent of the Raja. Rather these injuries could as well be caused by a 303-rifle. Dr. J. P. Vidya (CW. 113) Chief Medical Officer, Kulu performed the autopsy on the body of Girdhari Lal. His post-mortem report is (Ex. B-31). He found one wound of entry and one wound of exit which was definitely caused by a bullet shot. Being an experienced doctor, he could not tell the nature of the fire-arm used, by the examination of injuries. According to him for that a special forensic knowledge is required. However, he was of opinion that the wounds were

caused by a high velocity shot. Some broken pieces of bones were visible in the X-Ray plate of Girdhari Lal. According to the doctor, the bullet had struck the bone and got deflected after breaking the bone into pieces. The bullet had also fragmented and that had made the wound of exit of a bigger size. Dr. Vaidya (CW. 113) also believes the statement of Dr. L. K. Singh (CW. 112) and the latter could not be definite, as he appears to be, regarding the weapon used for causing the injuries upon Tek Ram. Similarly the bullet could have disintegrated in the case of Tek Ram and caused several wounds of exit for which Dr. Vaidya (CW. 113) stated that accounts for so many lacerated wounds. According to Dr. B. S. Vakil (CW. 114), forensic science is no doubt one of the subjects taught in the medical college but a sort of general study is given there and detailed knowledge is not imparted. The students are not even taught the versions ammunitions used in the firing by fire-arms. Therefore, Dr. L. K. Singh (CW. 112) could not be definite that the injuries on the person of Tek Ram (CW. 80) were not caused 303-rifle.

SECTIONS 127 AND 128 OF THE Cr. P. CODE

It has been strenuously argued by the learned counsel supporting the public version, that the unlawful assembly, if any, was not commanded to disperse, as required under section 127 of the Cr. P. Code. According to the learned counsel, since there was no command to disperse such assembly, the use of civil force itself was illegal. I have stated above the predicament in which Shri A. D. Bali, Dy. S.P. and his police officials found themselves inside the Court Compound. They were in the immediate danger of being physically assaulted and hence seriously injured. The Court building itself was in the process of being destroyed. Not only stones and other missiles were being thrown, but threats were also being given to burn the building. In such a situation, I do not consider that any command to disperse would have given any effective results. It is admitted case of the Magistrate and the police that no command to disperse was given under section 127 of the Cr. P. Code. According to Shri A. D. Bali, Dy. S.P., there was no opportunity to give such a command to disperse. It is difficult to agree with Shri Bali that he had no occasion to give such a command. He could have very well given the command in the first instance and soon thereafter could order for the firing. The question before the Commission is, as to whether the absence of any such command to disperse, renders the firing illegal, and the answer is obviously in the negative. Section 128 of the Cr. P. Code which deals with the use of civil force to disperse an unlawful assembly also contemplates a situation, where, without such a command being given, civil force is used by a Magistrate or Police officer to disperse the unlawful assembly. It is evident, the crowd was not in a mood to disperse and the people were determined to attach the police party as well as to destroy the Court building. They had shown a determination not to disperse and in such a situation even without a command to disperse, Shri Bali and his men could resorted to firing at the crowd. The Commission can only go to the extent of saying that Shri A. D. Bali, Dy. S.P. and other police officials would have been better advised to give a prior command to disperse and only thereafter they should have used the civil force by firing at the crowd. But if they did not do so, even then they did not transgress the limit of law and justifiably resorted to police firing, as a situation had arisen within the meanings of section 128 which indicated that without being so commanded to disperse, the unlawful assembly had conducted itself in such a manner as to show a determination not to disperse but to cause physical injury to Shri A. D. Bali, Dy. S.P. and his men and also to damage the public property.

Therefore, in the opinion of the Commission, despite non-compliance of section 127 of the Cr. P. Code, the firing by the police within the Court compound was justified. Shri A. D. Bali, Dy. S.P. and other police officials were acting in a bonafide manner. They wanted to protect themselves from physical assault and also to safeguard public property which was in the imminent danger of being destroyed.

According to Shri A. D. Bali, Dy. S.P. (CW. 128), the S.D.M. returned to the spot subsequently and rectified his conduct of ordering the firing by the police. This statement is only an embellishment which Shri Bali was told to exhibit in the case, as it was wrongly considered by the advisers of Shri Bali that unless the incident of firing was ratified by the Magistrates, it could not be held to be justified under law. It was forgotten that under sections 127 and 128 of the Cr. P. Code, a police officer as distinguished from a Magistrate could as well command for the dispersal of the assembly and also apply civil force to disperse such assembly. All the same Shri Bali did state that Shri Sharma rectified his conduct of ordering the firing-squad to fire at the crowd.

Another interesting feature in the case deals with the part played by Shri T. R. Sharma, S.D.M. (CW. 127), soon after the occurrence. He went before the Sessions Judge, Kulu and told him that he did not order for the firing. A similar statement seems to have been given by Shri Sharma before the Judicial Magistrate in whose Court a complaint under section 302 I.P. Code relating to the occurrence is pending decision. Whatever Shri T. R. Sharma stated before the Sessions Judge or before the Judicial Magistrate is really immaterial for the purpose of the Commission. The fact of the matter is that Shri Sharma was not present when the order of the firing was given. Therefore, he could not be the instrument for ordering the firing. It was Shri A. D. Bali, Dy. S.P. alone who held the responsibility of ordering such firing. Lala Mehar Chand Advocate (CW. 45), Shri Tej Singh Advocate (CW. 46) and Thakur Beli Ram Advocate (CW. 117) have stated that Shri Sharma was asked by them at that time and he stated that he had not ordered for the firing. These Advocates brought Shri Sharma before the Sessions Judge and got him acknowledge that fact in the presence of the Sessions Judge. I do not think it was very proper on the part of these Advocates to have brought Shri Sharma before the Sessions Judge for any such statement. The reason is that the Sessions Judge could even be the Court to deal with this incident of firing on the judicial side more obviously when a complaint under section 302 I. P. Code was being filed. As I have already stated, nothing substantial can be inferred from these statements made by Shri T. R. Sharma.

Shri T. R. Sharma himself was put questions regarding this talk which he had with the Advocates and also before the Sessions Judge. He stated that he was in a perplexed state of mind and so did not remember the exact words. However, he did admit that he stated before the Sessions Judge that he did not know who ordered the firing. This statement can only belie the version of Shri A. D. Bali, Dy. S.P. that he obtained a rectification of the firing from Shri T. R. Sharma.

Similarly the learned counsel made much, out of the talk which Shri I. K. Suri, I.A.S. D.C. (CW. 126) had with the members of the Bar on the next day i.e. on 7th October, 1971, and which talk was reproduced in the resolution of the Bar (Ex. A-72), Lala Mehar Chand Advocate (CW. 45), Shri Tej Singh Advocate (CW. 46), Shri Bhupinder Singh Advocate (CW. 47), Shri Yagya Chand Advocate (CW. 48) and Thakur Beli

Ram Advocate (CW. 117) have all stated about the visit of Shri Suri to the Bar Room and the statement which he made before the members of the Bar. According to these Advocates, Shri Suri expressed regret and very much explained that the police was under a mistake and committed an act of negligence when the order of firing was given. Firstly, any opinion expressed by Shri I. K. Suri, I.A.S., at that time regarding the police firing was immaterial and shall have no effect upon the decision by the Commission regarding the responsibility to be fixed for such firing. Secondly, Shri I. K. Suri, I.A.S., was eager to quench the feelings of the members of the Bar and wanted to bring about a peaceful atmosphere in the town. Being guided by these considerations, he made some statements before the members of the Bar. Whatever Shri Suri stated will not, therefore, have any impact upon the Commission while arriving at a decision on this important question.

The resolution of the Bar (Ex. A-72) also mentioned about the defilement committed by the police and the reference was decidedly to the entry made by the policemen inside the camp of Raghunathji while wearing leather boots.

CASUALTIES—HOW THESE WERE TREATED

It is abundantly clear that Girdhari Lal died on the spot and three persons more, namely, Bhagat Ram (CW. 37), Tek Ram (CW. 80) and Sansar Chand Gandhi (CW. 74) received injuries. It is curious to know that the authorities were only casual about the deceased as well as the injured and made no efforts to remove the dead or the injured to the hospital. In this connection, reference need be made to volume II, Chapter XIV, rule 14.56 (1) (j) of the Punjab Police Rules, 1934 (1959 Edition) which is reproduced below:—

“On the occasions when firearms have been used against unlawful assemblies it should be the duty of the magistrate, if one is present, to make adequate arrangements for the care of the wounded persons and for their removal to hospital and also for the disposal of the dead, if any. He should also, then and there, draw up a full report in consultation with the senior police officer present, stating all the circumstances and noting the number of rounds of ammunition issued and expended. If no magistrate is present, this report shall be prepared by the senior police officer who shall also take all possible action with regard to wounded and dead.”

No arrangement whatsoever was made for the removal of the dead to the hospital. Nor any care was taken for the medical examination of the injured. This is a serious dereliction of duty committed by the Magistrate Shri T. R. Sharma (CW. 127) and the Dy. S.P. Shri A. D. Bali (CW. 128).

The statement of Shri T. R. Sharma is rather unconvincing when he stated that he could only know on the next day that one man was killed as a result to that firing. The information was conveyed to him by his domestic servant—meaning thereby that his domestic servant was more vigilant than the officer himself. The Deputy Commissioner also informed him the next day about that person who was killed as a result to firing. Shri Sharma stayed with the Deputy Commissioner and the S.P. upto 11 P.M. on 6-10-1971 and those two officers themselves came to know about the deceased at 9 P.M. on that very day. It is, therefore, difficult to believe that Shri Sharma was not conveyed that information by the D.C. and the S.P. on 6-10-1971. Kulwant Singh S.I. (CW. 15), Tek Chand A.S.I (CW. 54), Durga Singh A.S.I. (CW. 55) and Parmanand S.I. (CW. 59) came to know on that very evening that one man was killed as a result to police firing.

Besides this, Shri S. N. Acharya (CW. 91) who is steno to D.C. also came to know while he was going to his house from the Court compound that one man was killed as a result to firing. Didar Singh (CW. 56) stated that he came to know immediately after the firing that one man had died. So many persons who were standing in the crowd including a few Advocates had already seen that man falling dead. Lalit Kumar (CW. 121) actually brought the body to the hospital where the doctor declared him to be dead. Despite all this, Shri Sharma, S.D.M. could not know about the death uptill next day while the other public authorities could know about the death only at 9 P.M. on that day. In this connection, the statement of Shri A. D. Bali, Dy. S.P. (CW. 128) is a bit interesting. He said that Shri Charan Dass Dogra, Advocate, informed him then and there that a person had fallen dead and was removed to the hospital. But Shri Bali thought that he was "bluffing" and so did not pay attention to what Shri Dogra stated. Even when it was expected of Shri Bali that he would have informed the D.C. and the S.P. about the statement made by Shri Dogra before him. On the other hand, Shri I. K. Suri, D.C. (CW. 126) stated that Shri Bali and others did not tell him about the killing of any person. They simply informed him that two or three persons from public side and 5 or 6 police constables had received injuries. When the D.C. was surprised as to how the members of the public received injuries when the firing was made in the air. Shri Bali and others seemed to be perplexed. Shri Suri contacted the hospital at 6 P.M. but could not know about the dead. This is again very surprising because at 5.45 P.M. a 'ruqa' (Ex. C. 15) was already received at the police station informing that a person was killed as a result to firing. Shri Bali testified before the Commission about this 'ruqa' which was shown to him while he was in the witness box. Shri K. K. Bhargava, S.P. (CW. 124) made enquiries from the Dy. S.P. and the S.D.M. about the casualties and he was informed that only 2 or 3 persons received injuries from each side. According to the S.P., the two officers stated that the injuries were due to police firing. The S.P. had a talk with the Inspector-General of Police on telephone at 9.30 P.M., while the D.C. had a talk with the Chief Secretary on telephone almost at the same time. All this indicates that the S.D.M. and the Dy. S.P. were much too casual about the dead and the injured and decidedly did not follow the instructions noted above as laid down in the police Rules.

CHAPTER V

ROLE OF THE MINISTER

There is evidence to indicate that the Minister Shri Lal Chand Prarthi, was a political rival of the Raja of Kulu (CW. 119), Thakur Beli Ram Advocate (CW. 117), Shri Tej Singh Advocate (CW. 46) and Shri Charan Dass Dogra Advocate. There is already some unfortunate history attached to the removal of Shri Charan Dass Dogra from the office of the President, D.C.C. Kulu. But, despite this political rivalry, there is no evidence for a finding that Shri Lal Chand Prarthi, Minister, was in any way directly connected with the firing incident either in the Kala Kendra or in the Court compound. An unsuccessful attempt was, however, made by a few witnesses to bring in the Minister, but they have miserably failed in their attempt and their statements are untrustworthy. These witnesses are Hari Chand (CW. 75), Sabza Chand (CW. 76), Ved Ram (CW. 77) and Devi Singh (CW. 78). It is stated by them that they had gone to the Civil Rest House where the Minister was found standing with Shri Dila Ram Shabab, M.L.A. and a few district officers. According to the the Minister stated in English at that time that

the Raja should not be allowed to enter Kala Kendra and should be arrested and humiliated. Sabza Chand (CW. 76) alone out of these witnesses understood English language and so he translated what the Minister had said to the other witnesses. The witnesses Hari Chand (CW. 75), Ved Ram (CW. 77) and Devi Singh (CW. 78) had gone in connection with the dispute regarding the grant to their Devtas. Thus they could not have been accompanied by Sabza Chand (CW. 76) who had not gone there for the grant of any Devta but had gone there for the upgradation of his school. It is difficult to understand what the Minister, Shri Lal Chand Prarthi, had to do with the upgradation of the school, because he was not the Education Minister. Except Hari Chand (CW. 75) the other three witnesses had no talk whatsoever with the Minister. Ordinarily they should have talked with the Minister, because they had gone for that purpose. So the statements of these witnesses are unconvincing. It appears they have been procured to say something against the Minister so that his participation in this affair could be established.

As against these witnesses, Shri K. K. Bhargava, I.P.S., (CW. 124) Shri I. K. Suri, I.A.S. (CW. 126); Shri T. R. Sharma, S.D.M. (CW. 127) and Shri Arjun Dev Bali, Dy. S.P. (CW. 128) have stated that they did not meet the Minister at all on that day in connection with the entry of the Raja inside Kala Kendra and did not go to him to give information that any incident was likely to happen as a result to that entry of the Raja inside Kala Kendra. There is no reason to disbelieve these witnesses.

I am, therefore, confident when I conclude that the Minister, Shri Lal Chand Prarthi, had nothing to do with the incident that took place in Kala Kendra and also with the subsequent incidents at the camp of Raghunathji and at the court compound of the Deputy Commissioner.

ROLE OF THE D.C. AND THE S.P.

It has been proved beyond doubt that the Deputy Commissioner Shri I. K. Suri, I.A.S., and the S.P. Shri K. K. Bhargava were not present within the Court compound. While the firing was made outside Kala Kendra, the D.C. was present in his Court Room and the S.P. was present in his own office. Upon hearing the gun shots, both of them came running to Kala Kendra and by the time they reached, the incident was over. From Kala Kendra they went to the office of the S.P. and were sitting there, when the mob collected in front of the Court compound and started pelting stones and other missiles. According to the statements of these two officers, the crowd was so intense on the road and other space between the office of the S.P. and the Court compound, that access to the Court compound was difficult and hence they could not reach there. I have already discussed above the evidence which proves that the D.C. and the S.P. were not available inside the Court compound. The talk which these two officers had with the Commandants of the S.S.B. and the I.T.B.P., indicates that they realised the seriousness of the situation and were trying to make amends. What more could they have done? Therefore, whatever happened in the Court compound is not the responsibility of the D.C. and the S.P.

Similarly the D.C. and the S.P. were not present inside Kala Kendra and so whatever happened there cannot be their responsibility. It cannot be stated that the D.C. and the S.P. already knew the seriousness of the situation and, therefore, should have presented themselves inside Kala Kendra at that time.

It cannot be stated that the D.C. and the S.P. should have themselves initiated action under section 144 Cr. P. Code or section 30 of the Police

Act. Whatever information Shri K. K. Bhargava, I.P.S. had received, he passed it on to the D.C., and both of them entrusted duties upon the Dy. S.P. and the S.D.M. The other two officers were themselves sufficiently senior and responsible. They could deal with the situation inside Kala Kendra in the manner best suited. The purpose of the S.P. and the D.C. was decidedly not this that the procession should be intercepted at any cost. They only wanted that the law and order situation should not deteriorate, as the information was that some clash might arise when the Raja takes out of the procession and the Kala Kendra property might not be destroyed as was done on 1-10-1971. Therefore, the entire discretion rested with the Dy. S.P. and the S.D.M. and it was their duty to have initiated action under section 144 Cr. P. Code or under section 30 of the Police Act. The D.C. and the S.P. were not expected to have imposed their discretion when they entrusted the entire matter to the other responsible officers. The D.C. and the S.P. had so many other duties to perform and it cannot be expected that they would have themselves gone and stood in Kala Kendra to watch the situation at every moment, which function was entrusted by them to the Dy. S.P. and the S.D.M.

It is also evident that these two officers were not properly informed about the dead and the injured by the Dy. S.P. and the S.D.M. They could know about them at 9 P.M. or near about. By that time the body was already taken to the hospital and the injured were also attended to. I, therefore, do not consider that any dereliction of duty was shown by the D.C. Shri I. K. Suri or the S.P. Shri K. K. Bhargava in this connection.

ROLE OF THE S.D.M.

Shri T. R. Sharma, S.D.M. (CW. 127) had ample opportunity to initiate action under section 144 of the Cr. P. Code and he could get issued the prohibitory order against the Raja of Kulu for entrance into Kala Kendra. Similarly he could get fixed a route of the procession under section 30 of the Police Act. He did not initiate any action in this regard, with the result that he could not justifiably intercept the procession of the Raja.

While in the Court compound the S.D.M. could have commanded the unlawful assembly to disperse under section 127 of the Cr. P. Code. This he never did, although in the opinion of the Commission, had he even done so the crowd was determined not to disperse and hence any such command would have remained ineffective.

The S.D.M. did not follow up the instructions of the Police Rules laid down in Chapter XIV, Rule 14.56 (1) (j) *supra* and that was again a default committed by him.

ROLE OF THE DY. S.P.

Shri Arjun Dev Bali, Dy. S.P. (CW. 128) did not get issued prohibitory notice under section 144 Cr. P. Code for the entrance of the Raja. He should have also got fixed up the route of the procession under section 30 of the Police Act. Having failed to initiate action under these provisions, his interception of the procession was by itself unjustified.

The Dy. S.P. along with his men entered the temple of Raghunathji while wearing leather boots and thus committed a sacrilegious act for which he incurred the displeasure of the public. He also handcuffed the Raja inside the temple for which there was no necessity. He paraded the Raja and his son in handcuffs throughout the maidan and this further infuriated the crowd.

These acts were totally uncalled for. The officer did not show a proper discretion or tact as was expected of him.

The Dy. S.P. was too casual about the dead and the injured. He did no initiate action as required by Chapter XIV, rule 14.56 (1) (j) of the Police Rules.

ROLE OF THE ADVOCATES

According to police version, some of the Advocates already knew about the occurrence and so they had sent information to the kardars of several deities not to bring their Devtas to Kulu on the occasion of Dussehra festival. From this it is inferred by the learned Advocate-General that these Advocates fomented the riot and were instrumental to the exhibition of rowdysm inside Kala Kendra and also in front of the Court compound. The evidence before the Commission is very deficient to lead to such inferences. The witnesses who came to state in this connection are Tula Ram (CW. 103), Anup Singh (CW. 104), Ratti Ram (CW. 105), Alam Chand (CW. 106) and Shesh Ram (CW. 107). I would propose now to discuss their evidence.

Tula Ram (CW. 103) is sarpanch of Kothi Gopalpur and he stated that two or three days before Dussehra festival Thakur Beli Ram had told him that he should not bring his Devta as some disturbance was likely to occur during Dussehra festival. This talk took place when the witness had gone to Kulu to purchase some medicine. He had received orders from tehsil to bring the Devta but did not inform them that Thakur Beli Ram, Advocate had said like that and that he was unable to bring his Devta. He could not name the shop from where he purchased the medicine nor could he name the medicine which he wanted to purchase. When pressed in cross-examination he said that Saridon tablets were to be purchased. Banjar market is very near the residence of the witness and Saridon tablets were available there and so there was no occasion for him to have come to Kulu. He could not produce any cash memo for the medicine which he is supposed to have purchased. He is neither kardar nor 'gur' of the Devta. As such he could not be believed to be speaking the truth.

Anup Singh (CW. 104) stated that one Bhagat Ram told him not to bring his Devta as Shri Yagya Chand Dogra, Advocate had sent information that some trouble was likely to happen during the Dussehra festival. The witness did not name Bhagat Ram in his affidavit. He is neither the kardar nor pujari of the Devta. He had also received information from tehsil but did not inform them in return that Shri Yagya Chand Dogra did not want him to bring the Devta. He too seems to be speaking false before the Commission.

Ratti Ram (CW. 105) got information from one Khem Ram who had gone to Banjar and was told that some information had reached there about 'jhagra' which was likely to take place during Dussehra festival. He stated that Thakur Beli Ram Advocate had sent that information. The statement of the witness is clearly based on hearsay evidence and as such unsustainable. Khem Ram could have been produced as he heard that information from somebody who was not named by Ratti Ram. The statement is hardly believable.

Alam Chand (CW. 106) similarly stated that Thakur Beli Ram had sent information to Banjar that he should not bring his Devta. The witness did not meet Thakur Beli Ram and he cannot even name that person who gave him the information. He too cannot be believed in the circumstances.

Shesh Ram (CW. 107) similarly heard a rumour at Banjar that Shri Yagya Chand Dogra, Advocate had gone there and told the people that they should not bring their Devtas to the Dussehra festival. This evidence is purely hearsay and cannot be relied upon. The witness did not report the fact to his officers although he is a publicity worker and was perhaps called upon by the authorities to collect Devtas and bring them to Dussehra festival. He did not mention the name of Shri Yagya Chand Dogra in his affidavit. Therefore, he cannot be believed.

From this evidence, nothing can be inferred against the Advocates, Shri Thakur Beli Ram or Shri Yagya Chand Dogra.

It is no doubt correct that prominent members of the Bar had previous political rivalry with the Minister, Shri Lal Chand Prarthi. But it could not be established that these Advocate took any part in inciting the mob or creating the disturbed situation inside the Kala Kendra or in front of the Court compound.

CHAPTER VI EXTENT OF CASUALTIES AND DAMAGE DONE TO PROPERTY

I shall now take up clause (c) which I reproduce below from the notification issued to the Commission for enquiry and report:—

- (c) The extent of human casualties dead or injured on both sides and damage to property during the course of this incident.

HUMAN CASUALTIES

It is proved that one man died and three received injuries from the public side. These are, Girdhari Lal deceased, Bhagat Ram (CW. 37), Tek Ram (CW. 80) and Sansar Chand (CW. 74). The injuries received by these persons were due to the police firing made from the Court compound.

Besides them, five constables and one Head Constable received injuries due to the pelting of the stones or other missiles by the crowd assembled in the Dhalpur maidan. These are Mohinder Singh H. C.; Shri Kanth, Constable; Lachhman Singh, Constable; Bantu Ram Constable; Sat Pal, Constable and Ram Singh Constable.

The injury reports of these respective persons are reproduced below and they will indicate the extent of human casualties (dead or injured) on both sides:—

- | | | |
|--|---------------|--|
| (1) Girdhari Lal
aged 25 years
(dead). | Ex.
B. 31. | <ol style="list-style-type: none"> 1. An oval wound 2"×1" on the back of the right side of the neck, 4" below and behind from the lower end of the right ear. The edges of the wounds are inverted and irregular. 2. A pear shaped wound 4"×3" on the frontolateral aspect of the right side of the neck. The apex of the pear is towards the right ear lobule 1/2" below it. The edges of the wounds are irregular. Muscles underlying the wounds are lacerated. Cervical vertabrae are fractured. Bone splinters are present. 3. Wound No. 1 and 2 are communicating. |
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| (2) Bhagat Ram
aged 25 years. | Ex. B. 63. | <p>1. A wound in the back of the neck in mid line 2" below the occipital protuberance. Oval transversally measuring $1\frac{1}{2}" \times 1\frac{1}{4}"$, edges irregular, inverted, a dark ring present at the margins. No tattooing or gun powder marks in or around the wound. Hole in the collar of the shirt correspond with this wound. Fresh bleeding present.</p> <p>2. A transversally oval wound on the left side of the neck 2" anterior and $\frac{1}{4}"$ below to the lobule of the left ear. Size is $\frac{1}{2}" \times \frac{3}{4}"$ margins everted irregular, no tattooing or gun powder marks in or around the wound. No dark ring at margins. Fresh bleeding present. The distance between wound No. 1 and No. 2 is $2\frac{1}{2}$ inches. The area between the wounds is tender.</p> |
| (3) Tek Ram aged
20 years. | Ex. B. 9 | <p>1. Lacerated wound $3\frac{1}{2}" \times \frac{3}{4}"$, size X-fascia deep, situated $\frac{1}{2}"$ below the lobule of left ear going downwards, backwards, starting 2" anterior to angle of mandible bifid at the end. Margin of wound everted at lower border and inverted C=a dark margin on upper and posterior border. Plasma oozing out from wound.</p> <p>2. Lacerated wound on left side of neck 1" posterior to wound No. 1 in the same direction. Margins irregular. Everted margins size $\frac{3}{4}" \times \frac{3}{4}"$ serum oozing.</p> <p>3. Lacerated wound circular $\frac{1}{4}" \times \frac{1}{4}"$ size, 1" below the left angle of mandible on left side of neck, margins regular inverted, dark colouration on margin and serum oozing out.</p> <p>4. Lacerated wound $1" \times 1\frac{1}{2}"$, size oblong transversally pointing towards lobule of left ear $1\frac{1}{2}"$ anterior to it. Posterior margin dark and inverted.</p> <p>5. Vertical linear wound abrasion into lower end coming forward slightly $1\frac{1}{2}"$ long $\times \frac{1}{2}"$ behind the left ear in its lower half.</p> <p>6. Abrasion $\frac{1}{2}" \times \frac{1}{2}"$ on left side of neck 3" about the left clavicle.</p> <p>7. Lacerated wound on anterior end inferior wall of external ear left side. Left ear drum lacerated, blood oozing out.</p> |
| (4) Sansar Chand
aged 37 years. | Ex. B. 62. | <p>1. A transverse bruise $4\frac{1}{2}" \times \frac{3}{4}"$ about 4" below the upper border of shoulder on left side. Colour red.</p> |

2. A bruise 3"×1" on the right shoulder, vertical from spine of scapula upto upper border of shoulder Colour red.
 3. A bruise 4"×1" size on right side $\frac{1}{2}$ " above right iliac crest on lateral aspect. Colour red.
 4. A bruise 1"× $\frac{1}{2}$ ", size on the top of head anteroposterior. Colour red.
- (5) Mohinder Singh H.C. aged 31 years. Ex. B. 32.
1. Superficial abrasion on the epigastrium $\frac{1}{2}$ " perpendicularly below the Xiphisternum measuring $\frac{1}{4}$ cm× $\frac{1}{2}$ cm. Tenderness and clinically no abdominal visceral injury.
- No abdominal guarding. No rigidity.
- (6) Siri Kanth, C. aged 47 years. Ex. B. 33.
1. Contusion right leg middle 3rd measuring $\frac{1}{2}$ "× $\frac{1}{2}$ ", tenderness and clinically no fracture.
 2. Bruise left leg upper third medial aspect. Tenderness and clinically. No bony injury.
 3. Contusion on the dorsal aspect of the right side of chest at the level of medial angle of right scapula tenderness and clinically no injury.
- (7) Lachhman Singh, C. aged 49 years. Ex. B. 34.
1. Contusion left forearm. Tenderness and movement not restricted. Clinically no bony injury.
- (8) Bantu Ram, C. aged 40 years. Ex. 3 B. 35.
1. Superficial abrasion measuring $\frac{1}{2}$ "× $\frac{1}{2}$ " situated on the anterior-lateral aspect of left knee joint on the tibial tubercle. Tenderness and clinically no bony injury.
 2. Contusion left ankle joint. Tenderness and clinically no bony injury.
- (9) Sat Pal, C. aged 26 years. Ex. B. 36.
- Stitched lacerated wound on the superior aspect of the left orbit measuring $\frac{2}{3}$ " irregular in shape, having the wound stitched by Dr. B. M. Gupta, M.O.C.H., Kulu on 6th October, 1971 at 5.40 P.M.
- (10) Ram Singh, C. aged 28 years. Ex. B. 37.
- Lacerated wound $\frac{1}{2}$ " size on the posterior aspect of left parietal bone at the side of inter parietal suture. Bleeding and tenderness and clinically no bony injury.

As to the damage done to the property, no substantial damage could be proved inside Kala Kendra. I have already discussed the evidence above, which indicates that a few chairs were either found overturned or in damaged condition while the procession of the Raja passed through Kala Kendra.

As to the damage done to the Court building, it is evident that all the glass-panes of the ventilators, windows and doors were found broken. A part of the wooden fencing of the Court compound was also broken as fencing pieces were taken out and thrown over the Court building. Some stone pieces also fell inside the rooms of the building. A Glass sheet of the table of the Superintendent, D.C.'s office, was also found in broken condition.

CHAPTER VII

The last matter over which the report of the Commission is being asked is in the following terms:—

“(d) Any other matter which in the opinion of the Commission is relevant to the ascertainment of facts relating to the incident.”

In this connection, I have already discussed in detail as to what happened inside Kala Kendra on the evening of 1-10-1971. On that day the Chief Minister, Dr. Y. S. Parmar, had visited Kulu. Much rowdysm was exhibited and the student-community took prominent part in it. The miscreants entered Kala Kendra on that evening and destroyed that articles kept and furnishings set up on the stage which was being prepared for a cultural programme. The damage was much extensive and a detailed account of the same has already been given above.

Since the incident of 1-10-1971 was closely connected with the other incident which took place on 6-10-1971, the details regarding which were to be ascertained by the Commission, therefore a finding regarding the incident of 1-10-1971 has also been given.

CHAPTER VIII

In conclusion, the Commission would like to record its suggestions, lest such unfortunate incidents may not be repeated. Dussehra festival is a real pageantry of Kulu. The occasion is of great tourist attraction. The State Government is under a bounden duty to preserve the sanctity of the festival. In this connection the Commission would like to suggest:—

- (a) The Government should take a decision regarding the authority which has to manage the Dussehra festival. Unless the authority which has to run the show is ascertained, such disputes are likely to re-occur. These authorities could be the Government, the Municipal Committee of Kulu, or any other body or institution.
- (b) Rules or Bye-laws should be made defining the rights of public to organize functions, within Kala Kendra. These rules should particularly define the functions to be performed inside Kala Kendra relating to Dussehra festival.
- (c) The routes of religious processions pertaining to festival and relating to any particular deity brought to participate in the festival should be defined and marked out.
- (d) A detailed study should be made as to what religious functions are to be performed during the festival. The Raja of Kulu may be associated for finding out the details regarding such functions. If possible, a definite programme should be chalked out so that no dispute arises in future relating to the sequence of such functions and to the persons or deities participating in them.

- (c) The strength of the Magistracy and the police during the festival may be strengthened to meet any emergent situation of the nature as arose during the Dussehra festival of 1971.

ACKNOWLEDGEMENTS

Before parting with this report, I would like to record my appreciation of the valuable assistance received by me from my two Secretaries, Shri T. R. Handa and Shri Shamsher Singh Kanwar, both District and Sessions Judges. Shri Handa was able to study all the affidavits and he made the grouping of witnesses. He could not continue as Secretary to the Commission because of his sickness. He was succeeded by Shri Shamsher Singh Kanwar, District and Sessions Judge, who performed major duties of summoning evidence and attending to their statement. His assistance to the Commission in the preparation of the report is also commendable.

I would also record my appreciation of the services rendered to the Commission by the other staff and I would like to name in this connection Shri Mohan Singh, Reader; Shri T. R. Thakur, Private Secretary and Shri S. R. Attri, Stenographer. The entire ground work has been done by these officials and I am grateful for their services.

The legal assistance was given to the Commission by the learned counsel who were engaged by the respective parties. In this connection reference need be made to Shri Bakshi Sita Ram, Advocate-General; Shri R. N. Vaid, Advocate (since dead); Shri Charan Dass Dogra, Advocate; Lala Hem Chand, Advocate and Shri D. N. Vaidya Advocate. At the stage of arguments, the Commission had also the advantage of hearing Shri M. R. Mahajan a senior Advocate of Chandigarh.

SIMLA:
6th November, 1972.

D. B. LAL,
The Commission.

LOCAL SELF GOVERNMENT DEPARTMENT

NOTIFICATION

Simla-2, the 24th August, 1973

No. 13-9/72-LSG.—In pursuance of the provisions of section 61 of the Himachal Pradesh Municipal Act, 1968, it is hereby notified that with the previous sanction of the Governor, Himachal Pradesh, the Municipal Committee, Dalhousie, in Chamba district, has levied a surcharge of 50% instead of 25% on the rates of Octroi leviable in respect of all items except item Nos. 1 and 31 to 35 of its Octroi (without refunds) Schedule appended to the then Punjab Government Notification No. 6175-CI (4CI)-63/27507, dated the 3rd July, 1961 and have also restored charging of Octroi on eggs and poultry @ Rs. 5.60 per quintal or Rs. 2 per maund, the exemption of which was notified vide Punjab Government notification No. 5452-CI (4CI)-63/27292, dated the 1st August, 1963.

The imposition of the surcharge and charging of Octroi on eggs and poultry shall come into force from 1st October, 1973.

By order,
P. K. MATTOO,
Secretary.